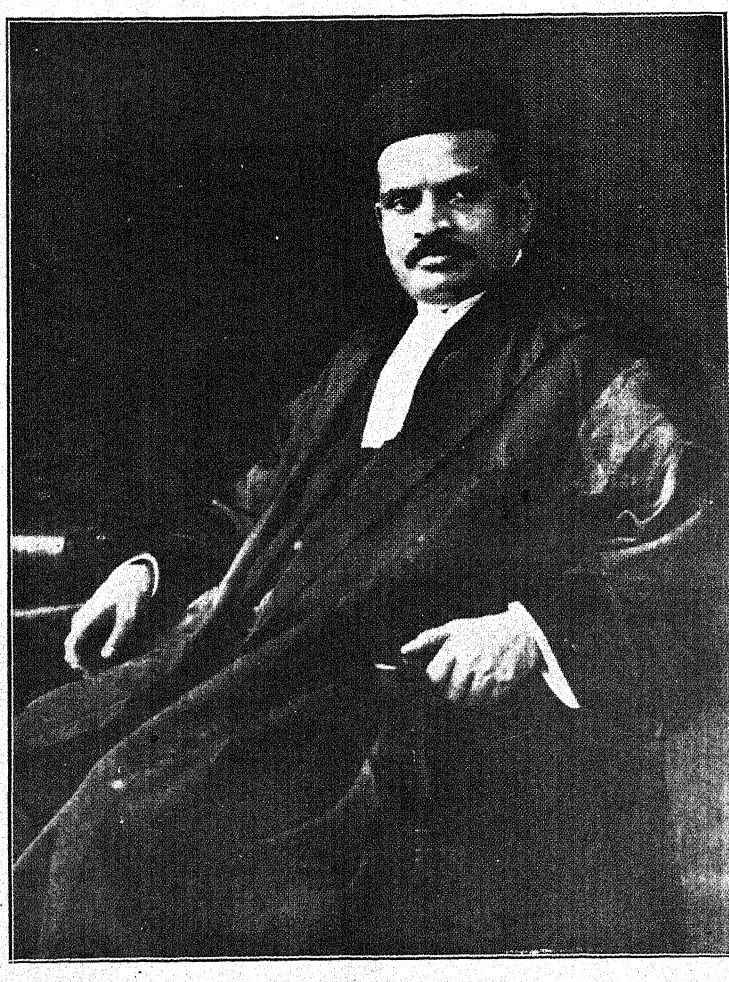

Sir Lallubhai A. Shah, Kt., M. A., LL. B.,

Puisne Judge, Bombay High Court.

Born, February, 4, 1873] **[Died, November, 16, 1926**

University of Bombay

Sir Lallubhai A. Shah Lectures, 1939.

(No. I.)

Rights of Women Under the Hindu Law.

By

J. R. GHARPURE, B. A. LL. B.
(Honours-in-Law) F. R. S. A. (Lond.)
Principal, Law College, Poona
Senior Advocate, Federal Court of India.

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PREFACE

The following lectures were delivered in 1939 at the invitation of the Syndicate of the University of Bombay. They are intended as an introduction to the "Rights of Women under the Hindu Law." All the technical details have been avoided as far as possible. The principal aim of the lectures is to create an interest among the general public for this important subject, and the author will feel satisfied if that is attained. Copious references, however, have been given to enable a more detailed study to be developed.

Mr. President, Ladies and Gentlemen,

Sir L. A. Shah his career:

It has been my privilege to be called upon by the authorities of this University to open the first series of the Commemoration Lectures, and I consider it an honour to have been so called upon. The topic recommended for the discourse is "the Rights of Women under the Hindu Law". Before, however, I proceed to discuss the subject, it would be proper to refer briefly to the life and career of the late Sir Lalubhai Shah. Sir Lalubhai, belonged to a very respectable Bania family. His father, Mr. Asharam Daluchand Shah was Diwan in several States in Kathiawar and was wellknown in Gujarât.

Sir Lalubhai was born on February 4, 1873. He received his early education at Ahmedâbâd in the High School and the Gujarât College. At the early age of 19 he passed the M. A. Examination in Mathematics, and in 1894 he took the degree in Law. Thus at the early age of 21 he had passed practically all the Examinations of the University leading to the Master's degree in Arts and the Bachelor's in Law.

Soon after passing the Law Examination he commenced practice as a Pleader at the Bombay High Court, where in a short period he was able to make his mark. As a Reviewer has observed, 'it was not for him to learn, to labour, and to

wait'. In 1910 he was appointed acting Government pleader, which post he held till 1913. Upon the retirement of the late Sir Narayanrao Chandavarkar from the Bench, he was appointed a Judge, when he was only 40. This was the second instance of an Indian being appointed as a Judge of the High Court at this early age, the other being the late Justice Dwarkaprasad Mitter.

By temperament Sir Lalubhai was a quiet, unassuming worker in his own field. Although, therefore, at the time when the appointment was announced, it did not evoke much enthusiasm, still by his patience, perseverance and close attention to the subjects that came before him for disposal, Sir Lalubhai fully justified the choice.

While he was practising at the Bar he was known as a very conscientious and careful student of his cases. As a Government pleader he had a reputation for fairness and for maintaining the traditions of the past, which as all of us on this side are aware, were to help the administration of Justice and not to secure conviction. No practitioner who was opposed to him had any apprehension in his mind that there would be any departure on his part from this established tradition. After his appointment as a Judge he realised the necessity for a Hindu Judge to be closely acquainted with the 'original texts', the necessity which was inculcated for a long time at the Bombay High Court by the traditions of eminent Judges like Sir Michael Westropp, Sir Raymond West, Sir Lawrence Jenkins, and his immediate predecessor in office Sir Narayanrao Chandavarkar. Immediately after assuming charge of the office as a Judge he began a close study of the texts, and this study has been visible throughout the pronouncements which he had the privilege to make during the course of thirteen years that he worked on the Bench.

Sir Lalubhai will be remembered by the members of the Bar for his work as a Judge of criminal appeals where he scrupulously maintained the traditions of the Criminal Bench on this side of India. He was extremely scrupulous in his perusal of the criminal cases circulated for each week, and was very particular about securing justice, so that no innocent person should be unjustly treated, even at the risk of a really guilty one to escape.

He was very modest, unassuming and sometimes even overcautious. He had very simple habits, and he followed in life the healthy rule of plain living and high thinking. Besides his duties as a Judge, he had given the benefit of his advice and co-operation to several institutions, where also his actions were guided by a high sense of duty and regard for the discharge of the work undertaken by him. While thus engaged in the performance of his duty, he was snatched away on the 16th November, 1926. In fact, as Sir Amberson Marten the Chief Justice observed, "It was only on Monday that he was doing his work on the Bench in the Full Bench case, and while no one had any idea as to what was happening, he was cruelly snatched away from among us on the next day."

After his death his friends and admirers decided to commemorate his work, and the lectures, which I have been asked to deliver, are the outcome of this desire. His name is also permanently associated with the Law College at Ahmedâbâd for which he left the large legacy of Rs. 10,000 as a preliminary help for the inauguration of the Institution in Gujarâth.

The Juniors at the Bar had special regard for Sir Lalubhai. For, although he had made considerable progress within a short time in his status as a member of the Bar, he was still a junior by regard to the date of his enrolment.

and the juniors looked upon him as their representative in all questions affecting their interests as juniors. About the time the Law College was started at Poona in 1924, Sir Lalubhai was appointed Acting Chief Justice a second time, he visited it at our call, when he offered advice and words of encouragement to the students and to the members. Perhaps it was then that he conceived the idea of starting the Law College at Ahmedâbâd. It was, however, after his death that the wish became actually visualised.

I shall conclude this small sketch of his career with the following extracts from the remarks of Sir Amberson Marten Kt. the Chief Justice of Bombay :

"Sir Lalubhai owed nothing to favour for his success in life. He rose by his own merits and his own character, and it was at a markedly early age that his ability as a pleader and his character as an upright gentleman led to his being appointed to be one of His Majesty's Judges. For over thirteen years he was a Judge of this Court, and for three separate periods he acted as Chief Justice. It was the hope of many of us that he would shortly have found a seat on the Privy Council, where his knowledge of Hindu Law would have been of particular value in arguments before the Board.

"Sir Lalubhai had such a high sense of duty, such a love for India, and such a delicate regard for the feelings of others, that to know him was alike a privilege and an education."

As the great Hindu poet **Kabir** has said—

He came *crying* in the world,
Though every one was glad
He left *smiling*, winning laurels,
But every one is sad.

I will now turn to the subject, which is—

The Rights of Women under the Hindu Law

Introductory :— This subject, therefore, will necessarily require the preliminary study of some terms, which occur in the expression, viz. 'Rights,' 'Women,' and 'Hindu Law.' The word 'Right' may be defined as 'the capacity in an individual of controlling, with the assent and assistance of the State, the action of others.' When a man is said to have a right to do anything or over anything, what is meant is that public opinion would see him do the act, or make use of the thing, with approbation, or at least with acquiescence, and reprobate the conduct of any one who would prevent him from doing the act, or would fail him in that particular matter. The word 'right' involves the corresponding idea of duty. Every right, whether moral or legal, implies the active or passive furtherance by others of the wishes of the party having the right. Whenever any one is entitled to such furtherance on the part of others, such furtherance on their part is said to be their 'duty'. So much for the idea of 'Right.'

Rights.

The word 'Woman' generally is to be taken as a person of the female sex, and will have to be investigated later on with some degree of details as regards the normal and abnormal conditions of women.

The next expression to be considered is the expression 'Hindu Law.' The word 'Law' as it is understood in the West, particularly since the time of Bentham, Austin, and others indicates a complex idea, and it has been defined as a 'command issued by a sovereign political authority to a subordinate political authority in regard to certain acts or abstinences which are known as duty or obligation, enforced by what is known as sanc-

Hindu Law.

tion in case of the infringement of these duties.' The word 'Law,' therefore, or 'Positive Law' according to its acceptance in the West, involves as many as five elements, viz. the sovereign, which may be one or many; the subordinate; a command from the sovereign; obedience, which is called the duty; and sanction, which is the consequence of the disobedience of such commands.

Now the expression Hindu Law has been criticised by Western Jurists as a misdiscription on the ground that there is no origin to the so-called Laws of the Hindus, which could be traced to a sovereign, individual or a collection of individuals. Suffice it to say that this criticism has been subjected to a detailed scrutiny and consideration by writers both in India and in England and on the continent, and the result has now been reached[1] that there is nothing in the expression 'Hindu Law' which would make it unacceptable as indicative of a command with the consequence of a sanction attached to it in case of non-obedience.

Who are Hindus.

The word 'Hindu' in the expression Hindu Law is again a term which requires briefly to be explained as part of the preliminary study. Ordinarily and primarily the word 'Hindu' signifies and includes those who are governed by the Hindu scriptures. In other words, obedience to the theological doctrines of the Vedas is the condition for those who would be called 'Hindus.' But by a great deal of expansion and assimilation which is the characteristic of the Aryan race and particularly of the Indo-Aryans, a vast number of people although not professing themselves to be governed by the theological doctrines of the Vedas, are regarded as Hindus for the purpose of being governed by the principles of

1 Rattigan's Jurisprudence p. 17 (Ed. 1899), Dr. Bannerjee's Strîdhan pp. 1–5.

Hindu Law. Thus, the term Hindu includes, not only members of the original stock who were and are governed by the Vedas, but also others who were dissenters from the Vedic religion, who had cut out a separate path for themselves and had, therefore, dissociated from the Vedic persuasion, even these were and are regarded as 'Hindus' for governance by the Hindu Law. Others also, who had started on parallel lines of theological and sociological doctrines along with the Vedic, have also been regarded as Hindus for the purpose of their governance by the principles of Hindu Law. Thus the Jainas, the Buddhists, the Liṅgâyats and the Arya Samâjists, and also members of the Brâhmo and the Prârthanâ Samâj are governed by Hindu Law, and are called Hindus. The enlarged application of the term has been carried to such an extent that even converts from Hinduism have been regarded as Hindus governed by the Hindu Law. This topic has been elaborated in books devoted to the treatment of 'Hindu Law.' It would not be necessary therefore to dilate more upon it here. The term Hindu, therefore, although it *denotes* primarily the person who is governed by the theological doctrines of the Vedas, has a wider significance in its *connotation*, and includes not only those who are theologically governed by the doctrines of the Vedas, but others also not so governed, who prefer themselves to be called Hindus or to be governed by Hindu Law.

Dissenters and Converts.

It would now be time to turn to the subject with some elaboration. Hindu Law like all other systems of law has for its sources the Revelation, Tradition, Usages and Customs, Judicial decisions, Legislation, and Equitable considerations. Here again it will not be necessary to dilate in great details upon these sources as they are well known. As, however, it will be

Sources of Hindu Law.

necessary in the course of the ensuing discussion of the rights of women to take surveys of the ups and downs of the fortunes of women during the several stages of the evolution of the Hindu society, it will be convenient to divide these sources in their several stages, from a chronological point of view, so that it will be possible to form a comparative estimate of the position of women under the Hindu Law, and the fortunes of their sisters under other systems. Such a comparison would not only be necessary, but would yield good results in holding the mirror to its apologists, as also in striking a warning to its critics.

Particularly speaking therefore, the group of sources which are known as the texts may be divided into three periods, viz., (1) The Period of the Revelation (2) The Period of Tradition and (3) The Period of Usage or Customs modifying the traditions. For not only as regards the modern development of the women in India and elsewhere, but regarding the evolution of the position of women in ancient times, it would be an instructive process to take a comparative view of the position of women among the Indo-Aryans and among other branches of the Aryan clans of the West, as also in other types of civilization.

These periods fall under three heads :—

(1) The most ancient, i. e. pre-Vedic times upto 500 B. C. This period covers the literature of the Saṃhitâs, Brāḥmaṇas, the Upâṅgas and the Srauta literature.

(2) From 500 B. C. to 200 A. D. i. e., the period covered by the Sûtra literature, the Kalpa and the Śrauta sûtras and the Gṛhya sûtras, viz. of Âpastamba, Baudhâyana, Mânava &c. and the Dharma Sûtras of Gautama, Âpastamba, Baudhâyana, Vasiṣhṭha, Viṣhṇu and others. This is also the period of some of the earlier Smṛtis,

such as Manu, Yâjñavalkya, Nârada and others. The probable dates of these are determined in recognised books, and these are accepted in the forthcoming discussion.

It is sufficient for the purpose of having an appreciation of the evolution of the woman's lot in the Hindu Law to note that the stages are marked off by the groups as above. The most important author in this period is Kauṭilya, the well-known author of the Artha Sâstra who, by historical evidence, has been found to have flourished about 300 B. C. The two Mîmânsâs, the Pûrva and the Uttara of Jaimini and of Vyâsa, will also be helpeful in the determination of the rights of women during this period.

(3) From 200 to 1200 A. D. is the period covered by the third group, and in this are comprised the commentators on the metrical Smṛtis viz. Viśvarûpa, Aparârka, Vijñâneśwara and Sûlapâṇi on Yâjñavalkya, and also the commentators on Manu. As will be seen later on, this period marks off a further stage in the status and treatment of the women under Hindu Law.

The 17th century and the period following it exhibits a tendency towards a restoration to the woman of her former rights, and in some respects adding to her past status.

The practical importance of this grouping of the periods will be appreciated when a comparative view of the status of women is taken as the discussion on each topic proceeds.

CHAPTER I

It is often remarked, and quite correctly, that the civilization of a people is judged from the relations existing between the several sections of its component parts; and the most prominent division of humanity into component parts is into men and women; and, therefore, it is rightly observed that the status of women in a society determines the degree of advance that that society has made in the stages of civilization.

Mr. J. S. Mill observes[1]:

"Experience does say that every step in improvement has been so invariably accompanied by a step made in raising the social position of women, that historians and philosophers have been led to adopt their elevation or debasement as on the whole the surest test and the most correct measure of the civilization of a people or an age. Through all the progressive periods of human history, the condition of women has been approaching nearer to equality with men."

And Sir Henry S. Maine observes[2]:

"It has been said that the degree in which the personal immunity and proprietary capacity of women are recognised in a particular state or community is a test of its degree of advance in civilization; and, though the assertion is sometimes made without the qualifications which are necessary to give it value, it is very far indeed from being a mere gallant commonplace. For, inasmuch as no class of similar importance and extent was, in the infancy of society, placed in a position of such absolute dependence

1 Subjection of Women, p. 48.

2 Early Institutions, pp. 339–340.

as the other sex, the degree in which this dependence has step by step been voluntarily modified and relaxed, serves undoubtedly as a rough measure of tribal, social, national capacity for self-control—of that same control which produces wealth by subduing the natural appetite of living for the present, and which fructifies in art and learning through subordinating a material and immediate to a remote, intangible, and spiritual enjoyment. The assertion, then, that there is a relation between civilization and the proprietary capacities of women is only a form of the truth that every one of those conquests, the sum of which we call civilization, is the result of curbing some one of the strongest, because the primary, impulses of human nature."

Ancient Times:—Speaking of the most ancient times, it would be wrong to suppose that the position of women in those times was one of absolute subjection, though even then it was far from satisfactory. An examination of the evidence contained in books[1] devoted to this subject reveals the fact that the earliest woman was equal in energy, skill, ability, and even in physical proportion and strength with the earliest man. Even to-day where physical labour is the common occupation of the man and the woman in a community, it may not be a rare sight to observe an equality of physical development in the case of men and women, and in some cases the woman shows a much appreciated level.

But the biological formation of the woman and her constant subjection to pregnancy and delivery necessarily bring in their train a state of helplessness leading to dependence; for at each delivery a heavy price has to be paid in the strength that might have been conserved. The gradual

1 See "Mother" by Robert Briffault Vol. I, pp. 442 etc. "Man and Woman" by Havelock Ellis.

deterioration from the position of equality to that of dependence led to such a stage of depreciation in her status that there is evidence again on record which proves that the woman was regarded as nothing more or less than chattel. This notion was carried to such an extent that like other things of the household she was even offered as a means of hospitality to the guest.

Not only was there an exchange of women, but the husbands enjoined upon the wives the duty to respect guests in all possible ways, one of the ways recommended being to giving sexual satisfaction. Stray episodes in works like the great epic of the Mahâbhârata record instances of this fact.[1] e. g. The episode of *Sudarśana* narrated in the Mahâbhârata is even more telling.

There is no doubt that like the system of promiscuity of intercourse which was stopped by *Śwetaketu*[2], as has been narrated in the Âdiparva, the practice of offering the wife to a guest also came to be gradually discontinued.

(1) There is evidence for the theory that the women themselves were responsible for the roll of inferiority which was first fastened upon them on account of their biological and structural peculiarity. It was due to the fact that the woman was subject to the monthly courses. That there was a keen struggle between the two sexes about the enforcement of conjugal rights and in particular on the part of the women is evident from the episode of Indra in the Taittiriya[3] Saṃhitâ in connection with his killing Tvaṣṭâ

1 See Śântiparva 168.

2 See Anuśâsanaparvan Chap. XIII. Chap. II. Mahâ Bhârata. 122-9-20. अनावृता हि सर्वेषां वर्णानामंगना भुवि ।
ऋषिपुत्रोऽथ तं धर्मं श्वेतकेतुर्न चक्षमे । चकार चैव मर्यादा स्थितेयमिति नः श्रुतम् ॥

3 Tait. Saṃhitâ II 5.6, Vasiṣṭha V 6.7; and note 3 on p. 210 Gharpure's Tr. of Mitâkṣharâ.

the priest who was suspected of duplicity and partiality towards his maternal relations the Âsuras. This episode also evidences the fact that the women in agreeing to bear a third of the sin for the murder in the form of their monthly course, perhaps deliberately accepted this in exchange for the right to enforce the conjugal rights against the husband.

(2) The notion that the women were treated as property had reached such an extent that there are instances which point to the fact that they were even treated as targets for training men to the use of arms. The episode of Jamadagni ordering his sons to kill Reṇukâ, and of the sons Paraśurâma alone doing it, points to this fact which again gains confirmation from the subsequent career of Paraśurâma developing as the terror of the fighting class.

Leaving aside these fluctuations in the status of ancient women and coming to the more modern times, i. e. the classical period of the Greek and Roman civilizations, there is evidence that the lot of the Greek and Roman matron was not much better, since she was in virtual slavery to the man.

Comparing the lot of the women in India, it may be stated that it was much better than that of the Greek or the Roman matron.

Says Sir R. C. Dutt[1] "The absolute seclusion of "women was unknown in ancient India. Hindu women held "an honoured place from the dawn of Hindu civilization four "thousand years ago. They inherited and possessed "property; they took a share in sacrifices and religious "duties; they attended great assemblies on state occasions; "they openly frequented public thoroughfares according to

1 "History of Civilization in Ancient India" Vol. I, p. 256.

"their needs; they often distinguished themselves in sciences "and learning; and they even had their legitimate influence "on politics and administration; and although they have "never mixed so freely in the society of men, as women do "in modern Europe, yet absolute seclusion and restraint are "not Hindu customs. They were unknown in India till the "Mohamedan times, and are to this day unknown in parts of "India like the Mahârâṣhṭra where the Muslim rule was brief. "No ancient nation held their women in higher honour than "the Hindus, but the Hindus have been misconstrued and "wronged by writers unacquainted with their literature and "who received their notions of the women of the East from "Turkish and Arab customs."

In this respect, the following extracts from Manu[1] may be juxtapositionally noted with advantage :—

"Where the females are honoured, there the deities rejoice;[2] "but where they are dishonoured, there all religious rites become "useless. Women must be honoured and adored by their "fathers, brothers, husbands and brothers-in-law who desire their "own welfare. Where the female relations live in grief, the "family soon wholly perishes; but that family, where they are "not unhappy, prospers. The houses on which female relations, "not being duly honoured, pronounce a curse, perish completely "as if destroyed by magic."

In this connection note the following[3] :

"The realm of the eastern woman is primarily the realm "of the home; she has the true spirit of the bee; she "considers the collective good of the household before "her own; her great vocation is to be a wife and a "mother; she attends personally to her household duties, "and domestic service is not to her a disgrace ···

1 See Manu Chap. III–55, sqq.

2 यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः।

3 "Harem and the Purdah" by Elizabeth Cooper.

"She is honoured by the honour of her husband. It is "her business to make it possible for her husband and "her sons to advance, and she shines in the reflected "light of their achievements. · · · She has no ambition "to make name or fame for herself."

Also

"If the woman of the East be awakened to an advanced "development without harm to herself, then here is to "be found an enormous amount of suppressed capacity "for good and for evil."

and again the same writer observes :

"If the western woman comes to the oriental, bringing in "her hands the keys of intellectual advancement and "broadened life, her eastern sister will not be defeated "if she by example presents in return the even more "precious charm of obedience, modesty and loyalty "which fundamentally are the priceless jewels in the "crown of the world's humanity."

Note also the following in regard to the woman in Japan:

"A glimpse of the two-sided life of the Japanese woman may "be had in school sewing rooms. There we find foreign clothes in "the making. But there also are Japanese kimonos and *obis*. "Why this confusion of cultures? It means that the Japanese girl "has not completely sold out to the West. At · · · school she "improves her mind, at home her appearance. At school she is "trained for a career, at home she thinks only of a husband. And "Japanese men prefer the simple wife, not one full of *weltshmerz*. "At school she wears atrocious leather shoes, at home the *tabi*, "the little white bifurcated socks that Lafcadio Hearn likened to "faun's feet. At school she perches on a chair, longing to draw "her feet up under her. At home she subsides comfortably upon "the straw *tatami*. At school she competes with men. At home "she sits in the background and waits upon them with gracious "humility and the immemorial charm of a daughter of the "samurai. East and West have met, but not displaced each other "in the Japanese woman."[1]

1. "Where are you going Japan" by Willard Price, p. 26

Rights in Ancient Times

The question of the rights of the woman assumed importance in a pointed form during the last 50 years, although it may be mentioned that its beginning may be traced towards the end of the 18th century when the new theories about sociology and the rights of man brought on, or induced, huge revolutions in several States introducing drastic changes in regard to the mutual status of the citizens. The declaration of the rights of man, which revolutionized the entire human outlook, was primarily responsible for the introduction of this psychology regarding women. The origin of the movement thus may be traced to the dissatisfaction existing among the people regarding in general their status and the repercussions which this sentiment had over the woman class. It would therefore be convenient to take a short resume of the woman's position from the most ancient times down to the beginning of the recent movement.

Comparatively, the lot of the woman in India under the Indo-Aryan civilization was much better than that of her sister in Greece or in Rome. Among the Homeric Greeks, for example, marriage had primarily two distinct objects, viz. the preservation of the race and the protection of the property right of the family. Throughout her life, the woman's position was subject to the will and whim of man[1].

Lecky[2] observes: "There was a recognition of two distinct orders of women. The wife, whose duty was confined to her house; and *hetaira*, or mistress, who subsisted in her fugitive detachments."

"It was generally expected of the Athenian matron that she led an irreproachable life. Generally she was

1 See "Greek Woman" by Dr. Mitchell Corrol; see also Westermarck.

2 "History of European Civilization" p. 287.

married when young and lived in a special retired part of the house. The wealthy seldom moved out, and wives were accompanied by attendants. They never attended public spectacles, received no male visitors except in the presence of their husbands, and did not even sit at their own tables when male guests were there."

From this short description of the status of the Greek woman, observes Lecky, "One can imagine the reason why Greece, which was fertile beyond all other lands in great men, was so remarkably barren in great women."

The lot of the Roman matron was just the same. Her duties were confined to home. Generally the legal subordination of woman was reflected in the principle that she was a part of the family which is corresponding to the well-known text in Hindu law; "The father is the guardian during maidenhood, the husband during coverture and in youth, and the son in old age."[1] This was practically witnessed at Rome. The woman for all practical purposes was an accessory to the man. The reluctance of the Roman matron to enter the *manus* of the husband under *Justiæ Nuptiæ* has been explained by Prof. W. Warde Fowler.[2]

It may be observed generally that economic considerations also must have greatly contributed to the status of the woman in ancient times.

Nevertheless, there are instances even in modern times where suggestions to the contrary are made, both on biological and sociological grounds. The opposition of Mr. Gladstone and his Liberal Government to the Women's movement during the last quarter of the last century is well

1 पिता रक्षति कौमारे भर्ता रक्षति यौवने । पुत्रो रक्षति वार्धक्ये न स्त्री स्वातंत्र्यमर्हति ॥

2 See Chap. IV "Social Life at Rome during the time of Cicero" by Prof. W. Warde Fowler.

within human memory[1]. And very recently Dr. Krishna Prasanna Mukerji of the Śântiniketana has contributed articles to the Modern Review under the caption "Women's Equality" where with extensive quotations from Summer & Keller's "Science of Society" the learned writer has tried to make out that by her very nature the woman is handicapped in competing with man. Says the learned writer :

> "People, who maintain that women would have succeeded "in reputation building activities as much as men have "done had they not been inhibited by men, suffer from "an inferiority complex and misrepresent history."

and in the end, he says :

> "Much as I appreciate the willingness (rather eagerness) "of leisured class women to play their roles as "opponents and partners of their husbands, I should "like to remind them of their limitations".

and here the learned writer refers to the duties and obligations of the wife and mother roles, and concludes thus :

> "The feminist movement has proceeded into wrong "channels and under a wrong direction. To me it "seems therefore that the very opposite is the way of "enlightened and willing motherhood, and with a "deeper emphasis on the words 'enlightened' and 'will-"ing' (including thus in its meaning the right of "women to refuse to submit to wifehood and determine "the number of children she will like to bear)".[2]

Much to the same effect is the attitude of the 19th century Germany where it is frankly stated that beyond the famous three K's, *Kerche, Kuche and Kinder* (church, kitchen and children) which should be the chief occupation

1 See 'The Woman Question' (1872), Papers Reprinted from "The Examiner" (1871).

2 Modern Review for 1938, pp. 26–32 and 149–154.

of a woman, she had a subsidiary function in providing for the relaxation of the warrior.[1]

Plato indeed was the first, and for many a century the last thinker, to consider woman as the collaborator of man in all the diverse functions of their common life, and on this question certainly no one took Plato very seriously until the Suffragette movement of the last century found in him a respectable authority to back the feminine demand for a share in government, while the eastern people degraded the position of women by one stage lower by regarding her as a desirable property. In spite of these doctrines about women countless numbers of men and women have lived together in concord and happiness. This is a striking testimony to the fact that human beings are so often much above mere theories.

Judging from this aspect of the question, undoubtedly the status of Hindu women was much more satisfactory than that of their sister in other lands during the Vedic period and the early part of the Sūtra period. It is only from the latter part of the second or Sūtra period and the later periods that the lot of the Hindu women was in a downward course of deterioration, and a stage has now been reached when a universal expression of a desire for the amelioration of the condition of the woman and her uplift is manifest.

"The rapid growth of literature on the 'woman question' indicates a prevailing impression that hitherto society has failed to draw from women all the good they are capable of doing, that it leaves their powers insufficiently developed, and that we accordingly find a wide diffusion of misery dogging the steps of wasted energy. The mission

1 "Women in the Civilized State" by John Presland p. 6.

of the present day may be said, on the one hand, to utilise women, and, on the other side, to give them justice. Those two objects have ever been united, and are, indeed, inseparable. Injustice does much harm to women, but it does more to men—it recoils upon them and depraves their character. For, after all, there is some truth in the paradox that Plato puts into the mouth of Socrates, that it is a greater evil to do injustice than to suffer it. The extravagance and frivolity of women—the favourite topics of small satirists, is simply the reverse side of the medal that they contemplate with ecstasy their dependence, irresponsibility, and idleness. The position of women is excessively unfavourable to the growth of any virtues except those that flourish among slaves. To a being endowed with reason or forethought, what can be more desolating and demoralising than the reflection that her destiny is not in her own hands, that she is as clay in the hands of the potter, that caprice or accident, not merit or worth, is the arbiter of her career? Yet such is the ideal position of woman, according to our grandmothers' notions. Standing on the banks of the broad river of human existence, she is not suffered to paddle her own canoe, but has to wait till some craft, driven by the current, or wearied with its emptiness, invites her on board. To many thousands there is one sure fact: they must stand till their hair turns grey, and learn that the world has no place for them."[1]

The rights of women can be scientifically assessed by examining the possible orbits of the connotations of the word 'right'. Dr. Holland in his well-known treatise on Jurisprudence sets out certain modes of classifying rights and these are generally accepted as scientific.

1 See 'The Woman Question' (1872), Papers Reprinted from "The Examiner" (1871), pp. 15–16.

According to him the rights of an individual depend upon (1) the public or private character of the person concerned, (2) the limited or unlimited extent of the individual, (3) the normal or abnormal status of the person, (4) and lastly, upon the act being due for its own sake, or being due merely in default of another act. In other words, as the learned author has put[1]: "The rights of an individual are either rights *in rem* or *in personem*, which are either of an accidental or remedial character, which may arise in a normality of conditions or under abnormal circumstances, and which may fall either under the substantive law or the adjective side of the machinery of law."

Following this principle and the methods set out, the rights of the woman under Hindu Law, and for that matter under any system of personal law, may be conveniently examined from the following points of view, viz. rights as they arise by regard to her Status, i. e. under the law of persons either as a daughter, wife, mother, sister, or in any other capacity ; and her relative legal position with the corresponding individuals, viz. the parents, husband, brothers, sons, and other personalities, in other words her position under *the law of Status*. *Secondly* her position or rights as they arise in regard to the *law of Property* and in particular reference to the Hindu Law, her status as a member of the joint family in all the varieties or shades of character above referred to. *Thirdly,* apart from the joint family, her rights of property independently of family and independently of others, i. e. regarding property which she is entitled to hold under the Hindu Law absolutely and at her disposal, subject of course to certain qualifications arising under the exigencies of each particular case.

1 See Ch. XI.

These are, broadly speaking, the three main points of enquiry under which the rights of women may be examined and determined, viz.

(1) Under the Law of Status

(2) Under the Law of Property ; in a joint family as a member of the family ; or as succeeding to a single man's estate, and

(3) In regard to the special kind of property which she is entitled to hold under Hindu Law and which is known as Strîdhana, " Woman's estate. "

There is thus the three-fold manner in which her rights may be examined under a *normality of conditions.*

Likewise, there are circumstances which may arise under *abnormal conditions* also, as for example, when a woman as an entity or a *person* under the law is neither a daughter nor a wife, in the eye of the law as in all normal conditions she is seen to be, but occupies a rather anomalous position which therefore may be generally characterised as abnormal. Such a position is instanced in the case of a woman known as 'a Devadâsî,' 'a dancing girl, 'a concubine', 'Swairiṇî', or any other similar kind of woman referred to in the texts. It will thus be seen that an examination of the rights of women will conveniently fall under the heads as stated above. i. e. Normal and abnormal conditions and in either case, in regard to status and property.

Normally speaking, therefore, the position of a woman as regards her rights and obligations has to be examined in regard to her status (1) before marriage, and (2) after marriage.

CHAPTER II

Daughters

The daughter under the Hindu Law is expressed by two words 'Kanyâ' and 'Duhitâ'. She has several capacities which are expressed by these two terms. Yâska[1] in his *Nirukta* gives as many as four significances to the word daughter. The word 'Duhitâ' meaning 'milk-maid' carries the notion as regards the function of daughters which revailed in many other countries also.

Having regard to the peculiar conditions of ancient times, the birth of a daughter in a family generally was not regarded as a very auspicious event. In some cases it was positively regarded as a great misfortune.[2] From her birth she was regarded as an evil omen, and until marriage in some cases the daughter had not even the privilege of being received in company by the parents, not even by the mother. As a result of this sentiment, instances of female infanticide have been noticed in India till recent times. This is true also of other countries.

It is, however, interesting to note that the word for a daughter in all the branches of the Aryan families of Languages, is 'Duhitâ', the two parts of which it is composed signifying 'the drawer of milk', attesting not only to the primitive pastoral condition of the people, but to the

1 Nirukta IV. 2. 15. कन्या कमनीया भवति। क इयं नेतव्या इति वा। कमनेनानीयते इति वा।

2 A graphic description of this sentiment will be found in the book "Woman of the 18th Century" by Edmond Jules De Gouncourt.

common occupation of the girls in the days before the several migrations of the Aryans took place.

In the Vedic period and also during the greater part of the second period, i. e. of the Sûtras, the daughter held a responsible position in the family. In fact, as late as 300 B. C. the daughter has been given a position of equality along with the sons. **Vasiṣhṭha** has characterised the daughter 'as if she were a son' and this has been endorsed by **Vijñânes'wara** in his *Mitâkṣharâ*, as "The daughter itself is the son."[1] No doubt having regard to the exigencies of ancient times, when fighting youths were greatly in requisition, the general desire for having sons can easily be understood. But although a son was eagerly looked for, the daughter was regarded with not less favour in the higher circles, and after the first shock of the realisation of the sex of the child was over, the child was practically treated on the same footing as the son. In other words there is evidence which supports the statement that in the ancient times daughters were treated on a par with the sons. It will be remembered that sometime before the birth of a child and afterwards, there are certain purificatory ceremonies called *Saṃskâras* which are performed on the child. In the early times these *Saṃskâras* were equally observed in the case of children of either sex without discrimination. Especially the well known *Saṃskâra* of *Upanayana*, or initiation for education, was evenly observed for both the son and the daughter. There are instances in literature to show that there were in educational institutions male as well as female students, both of them reaching the highest stage of development and attainment in scholarship. Sîtâ has been described as performing the

1 See 'Vasiṣhṭha' VI. XVII. 15. Yâjñavalkya. II. 128. Gharpure's tr. P. 1046 L. 12. See also Yâska XI. 2. 15. पुत्रिकैव पुत्रः ।

Sandhyâ worship. The well-known dialogues between Yâjñavalkya[1] and his two wives are evidence of this attainment by women and there are passages in classical[2] literature which also bear testimony to the fact that women received all kinds of education. During the Vedic times women occupied a position of equality with the men. The well-known derivation of the word wife by Pâṇini[3] पत्युर्नो यज्ञसंयोगे and other passages bear out the fact that the wife was as learned as the husband so that she could co-operate with her husband at a sacrifice, and this would not be possible unless she was given education during her maidenhood. As was the universal rule in Vedic and post-Vedic periods, a pupil was not admitted to any branch of education without the necessary initiation ceremony called the *Upanayana*. The rule प्रतिवेदं ब्रह्मचर्यं[4] shows that only once, but for each change of the faculties of study, the initiation ceremony was necessary. The women were taught, as were the men, the Vedas with the cognate literature. They were even trained to the other accomplishments, a knowledge of which was imparted to sons. A look at Jaimini's Book VI, and the first Adhikaraṇa and the sixteen Sûtras known as *Adhikâra*, 'capacity', will give ample proof of the fact that according to the notions then prevailing men and women had the same scope and latitude in matters of study.[5]

It is from about 300 B. C. that a rift appears in this harmonic continuance of the equality of the two sexes.

1 See "Bṛhadâraṇyaka Upaniṣhad" 46; the dialogue between Yâjñavalkya, Maitreyî and Gârgî.

2 See "Mâlatî Mâdhav" Act I. Where Kâmandakî Bhûrivasu and Devarâta have been referred to as co-students.

3 See Paṇini IV-1-33.

4 Yâjñ. I. 36

5 See New Indian Antiquary, Vol. IV, pp. 78–85, Position of Daughter in the Vedic Ritual by J. B. Chaudhari.

Atiśâyana[1] appears to have led the movement advocating the cancellation of the religious and educational privileges of women. The fanciful reasoning of Baudhâyana arguing women out of the right to acquire or hold property is well known. Even during this period of transition are noticed expressions of views in support of the capacity of women not only to hold property but to preserve it from any infringement. Whatever the causes may have been, there is no doubt that it was from this time that a depreciation in the status of women comes to be noticed. To such an extent was this carried that women were bracketted together with Śûdras.[2] In about the 2nd Century B. C. and further on, the rule that ceremonies regarding women should be performed without mantras had become almost common. Although Yâjñavalkya[3] concedes the performance of Samskâras upon women, still he directs their performance in silence. It will thus be seen that as a depreciation was gradually taking place in the matter of the status of women in regard to education, that depreciation had its reflexive side in other matters with the result that women came to be placed generally on a lower level than men.

Kâlidâsa correctly puts through Kaṇva the general sense of helplessness at the status assigned to wemen. 'The daughter is the property indeed of another.'[4] Yâska in the Nirukta appears to proceed on the assumption that the daughter is expected to migrate from the father's home to that of the husband.

But even at this stage, that women in high class families were given not only religious but also secular edu-

1 See Altekar's "Education in Ancient India" p. 229.

2 See भगवद्गीता IX. 32 स्त्रियो वैश्यास्तथा शूद्राः ।

3 See Manu II-36, IX-18, Yâjñavalkya Âchâra 13.

4 अर्थो हि कन्या परकीय एव ।

cation including military training, is well-known as a historical fact.[1]

Indeed, it was more or less a common rule that girls of the ruling and aristocratic families were given administrative and military training. Since ladies in ruling families were expected to be at the helm of affairs in the case of an emergency, provision had to be made to give them a fairly good education in these branches. In ordinary families, however, literature and fine arts were the normal branches of studies.

This education of women was not calculated to make women economically self-sufficient. The economic independence of women is of a later date. Even then a Hindu woman had been so trained that in cases of emergency she could eke out a subsistence for herself and her children. In such a case weaving was regarded generally as a means of subsistence. And this continued upto the 9th century A. D.[2]

1 See Altekar's " Education in Ancient India" pp. 240, 241. and authorities cited.

2 See Altekar's "Education in Ancient India" p. 243; also see Medhâtithi on Manu V. 157.
असति भर्तृधनादौ...कर्तनादिना केनचिदुपायेन जीवन्त्याः।

CHAPTER III

Marriage

After the periods of study, the next stage (*Âśrama*) in the life of an Aryan is that of a householder which is established by marriage. The four stages of the life's course, which are well-known among the Aryans are Brahmacharya, Gârhasthya, Wânaprastha, and Sanyâsa ; i. e. the state of the celibate student, the householder, the hermit, and the ascetic. There are instances in Vedic and the classical[1] literature where women, like men, did not enter the order of a householder, but straightway resorted to the hermit's or the ascetic's stage. The general rule however was, as was the case with men, that the (next) stage resorted to after the study was that of the house-holder. That leads to the question of marriage.

Marriage according to Hindu law, is strictly a sacrament, a Saṃskâra, and is part of the law of status. It has been defined by Westermarck[2] as " A relation of one or more men to one or more women, which is recognised by custom or law and involves certain rights and duties both in the case of the parties entering the union and in the case of children born of it. " And after a further consideration of the other aspects of marriage, that learned author alternatively defines[3] it as : "A more or less durable connection between a male and a female lasting beyond the mere act of propagation till after the birth of the offspring. " This no doubt has reference to those societies and people among whom marriage had its origin more or less in considerations of expediency and not as of status. But according to the

1 e. g. Kâmandakî in the Mâlatî-Mâdhava.
2 Westermarck, Vol. I.
3 See Westermarck Vol. I, p. 26.

principles of the sociology of the Indo-Aryans marriage is one of those events which happen in the life of the individual only once. The well-known text of Nârada[1] "Once alone does the seed fall, once is the damsel given, and once is the declaration made that 'I shall give'' illustrates the notion about marriage among the Indo-Aryans. "These three are, in the case of good men, acts which are done once and for all".

Marriage is an institution of the Aryans, and according to the periods of evolutions it has passed under several forms of which eight well-known are described in Manu and Yâjñavalkya.[2] Of these eight forms, the first four are called the approved, viz. the Brâḥma, Daiva, Ârṣha and Prâjâpatya and the last four the unapproved viz. the Âsura, Gândharva, Râkṣhasa and Paiśâcha. These forms either represent the several stages of evolution, or are evidence of the contact which the Indo-Aryans had with people and races bearing these names, e. g. the Âsura, Gândharva, Râkṣhasa and Paiśâcha. Looking at it from the point of view of evolution it appears that the last, viz. the Paiśâcha which is called the basest, refers to a stage of human development when the society was in its most primitive condition.

Even before marriage as an institution was established, there is evidence both in the Vedic and post-Vedic literature to an absolute non-existence of a condition of settled order between the sexes under any form of marriage. The Mahâbhârata gives instances of such a state of things.[3] The well-known incident of Śwetaketu in the Âdi-Parva refers to the promiscuity of intercourse among the sexes. The late Mr. V. K. Rajwade in his learned contributions on

1 सकृदंशो निपतति सकृत्कन्या प्रदीयते । सकृदाह ददानीति त्रीण्येतानि सतां सकृत् ॥

2 See Manu Ch. III, and Yâjñavalkya I. 58–61.

3 See Mahâbhârata XII–102. IV–32–40 I–Chap. 128.

this branch of the evolution of the Indo-Aryans has referred to evidence in the Ṛgveda, which carries promiscuity even further.[1] He has referred to hymns from Ṛgveda where a brother and a sister, an uncle and a niece, and even a father and a daughter had intercourse. Leaving aside the hoary antiquity and coming to the relatively advanced times, it was Śwetaketu who first laid down the limits to intercourse between the sexes.

Of the eight forms of marriage, the Paiśâcha was the basest because it was characterised by subjecting the girl to a dope and in kidnapping or forcibly abducting her from her parental abode in spite of the remonstrances from herself and from the parents. The well-known episode in Roman history, known as the 'Rape of the Sabines' during the reign of Romulus is a parallel instance of this. From the point of evolution, Paiśâcha would appear to be the most ancient form.

Then comes the Râkṣhasa or the forcible carrying away of the girl. This was also known as a Kṣhatriya marriage, as a marriage which was appropriate to the fighting classes. The Mahâbhârata gives instances of the well-known cases of Subhadrâ being carried away by Arjuna, and Rukmiṇî by Kṛshṇa.

Particularly note the sentiments of Śrîkṛshṇa where he says: "Arjuna did not like the Brâḥma marriage; because "brides are treated there as objects of gift like cattle. Pur- "chase of a bride being a disreputable procedure was altoge- "ther out of the question. Since Subhadrâ had fallen in love "with him, to carry her away, relying upon the powers of "his own might, was the only honourable course left open

1 See Chitramayajagat for 1923 p. 209. This position has been hotly contested by scholars. See also p. 237 of Chitramaya-jagat for 1924.

"for Arjuna."[1] Instances from Ṛgveda also may be found where this kind of marriage is evidenced.

The next is the marriage by choice, viz. by mutual consent which is described by Yâjñavalkya[2] as "A Union of the two by mutual desire."

The last form of the evolution of marriage in due course is marriage by purchase, known as the *Âsura*, where the depreciation in the status of the woman is also to be noticed. What is called the bride's price or *huṇḍâ*, according as the party paying is the bridegroom or the bride, is the element of this marriage, a sort of a barter. It is evidence of the stage of depreciation to which the woman was reduced; for, stated roughly, it is nothing more or less than the sale of the girl. It is evidence of the sentiment of the community with reference to marriage. Wherever the money element enters into the transaction, it is to be characterised as Âsura[3]. It is perhaps evidence also of the custom among the people bearing that name, and Westermarck refers to the system of marriage by payment and exchange. This is further evidence of the fact that women came to be regarded as mere chattel, to be either bartered away or alienated for a price. Even at the present day money is demanded or offered and accepted both for and by the bride as well as the bride-groom, the so-called advanced and educated classes being the foremost in such a demand. Among some of the Śûdras in Mahârâṣhṭra a

1 Altekar –p. 44. Mahâbhârata I. 245 verses 5–6. See Ch. XXI, Vol. II of Westermarck's "History of Human Marriages" for further information on this form of marriage.

2 See Yâjñavalkya, Âchâra. इच्छयाऽन्योन्यसंयोगः On this point also see Ch. XXII of Westermarck, Vol. II.

3 आसुरो द्रविणादानात्. Yâjñ. I

specific amount is charged for the offer of the bride in marriage; the more advanced the bride in age the larger is the amount demanded and similar is in the case of bride-grooms.

In the other four forms of marriage known as the approved, there is observable a higher psychology, although in two there is an element of exchange. The highest and the best form that can stand a scrutiny from this point of view is the Brâḥma in which the notion of exchange or sale or a return of any payment as a consideration is entirely absent. The father of the bride having come to notice the attainments of the Bridegroom, respectfully invites the latter and with the offer of a dress and presents, gives his daughter in marriage to him.[1]

This discussion as regards the form is useful in assessing the development in the status of women under the Hindu Law.

Other Forms of Marriage

The extreme rigidity of forms has been responsible for the introduction of other forms of marriage more or less of an elastic nature and found to be serviceable to the parties under the particular exigencies of individual cases. The **Ânanda** form of marriage, the special form introduced by the **Brâhma** and the **Prârthanâ** Samajas, the form inaugurated by the Hindu Missionary Society, the **Âryan** marriage, the **Sword** or the **Khând** marriage are instances of these. Besides these, the forms under the statutory enactments have also been adopted by those resotring to the statute.

1 ब्राह्मो विवाह आहूय दीयते शक्त्यलंकृता ॥
आच्छाद्य चार्चयित्वा च श्रुतिशीलवते स्वयम्। आहूय दानं कन्याया ब्राह्मो धर्मः प्रकीर्तितः॥
Manu III.

See Westermarck, XXIII-Vol. II

The Age in Marriage

In the Vedic times, and also in those immediately following the Vedic period, the age of the bride was sufficiently advanced, as would appear from the *mantras* bearing on the ritual of marriage. In fact the ritual to be performed on the fourth day of the marriage, after the bride entered the husband's house, known as *Chaturthîkarma* is identically the same as the *mantras* which are recited at the appearance of the first menses. The instance of Sîtâ and her cousins married to Râma and his brothers, and the description of their married life upon reaching Ayodhyâ after their marriage bears ample testimony to the fact that the girls in marriage were of an advanced age. There are passages in the Vedas also which bear this out. In all marriages generally the bride was junior in age to the bridegroom and this evidently is the correct rule, even from the biological and medical points of view.

Other Conditions for marriage besides the age are as regards the choice of the family and race, leading to considerations of the rules of exogamy and endogamy. Shortly stated, the rule of Hindu Law is that the parties should be inside the caste and outside the family. The rules as to exogamy, have led to acute difference of opinion amongst the scholars. There are three possible reasons which may be given in support of these viz.

(1) the biological ;
(2) the sociological ;
(3) and a combination of the two.

The statement of Mac'Lena in regard to exogamy, viz. 'exogamy has arisen from family infanticide', which he assumed to be common among savages everywhere has been sufficiently discredited.

The probable reason for exogamy appears to be the importance of maintaining social purity. Evidently persons belonging to the same family and living under the same roof must be impressed with the impossibility of marriage between them *inter se* if the purity of their social life is to be maintained. That appears to be the main reason.

As regards the biological reason based on the effect of interbreeding, it has been found by experiment and research that interbreeding does not necessarily produce any deleterious consequences either to health or to the propagated species.

This leads to the next question, which has assumed considerable importance in Hindu Law, as to the choice of Gotra.

Sagotra Marriages

The theory of Gotra, no doubt, has taken deep root in Hindu Law, but a close examination of the literature on the point does not disclose any ancient origin to this prohibition. There is no trace of such a prohibition in the vedic times. The very conception of Gotra, as a group of persons connected with each other by spiritual or blood relationship, was unknown in the Vedic age; the word Gotra in the Vedic literature is often used but in the sense of a cowpen. The prohibition of sagotra and sapravara marriages does not go back to a period earlier than about 600 B. C.[1] The first appearance of this prohibition is noticed in the Sûtras, especially the Gṛhyasûtras. The genesis of the prohibition appears to be that persons belonging to the same group or colony should be above the temptation for a sexual union between each other, a sentiment which marks a considerable advance over the Vedic times, and is evidence of the anxiety

1 See Altekar's "The Position of Women in Hindu Civilization."

for the maintenance of purity between members of a group *inter se*. Another reason appears to be that the members of a group, after the prohibition had taken a positive form could trace their descent from their ancestors.

There might perhaps be the medical ground, as according to one theory, a mixture of the same blood corpuscles leads to the deterioration of the species. In that view the prohibition on the ground of Gotra may have some force, but in the generality of cases, persons bearing the same Gotra are not only removed from each other regarding ties of blood relationship, but in some cases persons not belonging to the same Varṇa or even caste happen to have the same Gotra, and by the extention of this rule to an absurd degree even those persons—although one may be a Brâḥmaṇa and the other a Kṣhatriya,—are declared to be debarred from entering into a marital union on account of the Gotra. From this point of view, therefore, the prohibition laid down for a Sapiṇḍa relationship must be regarded as more imperative, but in practice the prohibition as regards the Sapiṇḍas is generally observed in the breach, and the prohibition as regards Gotra is regarded as imperative and insuperable, although there are texts and authorities to support the other view.

The case of the Śûdras, however, is different. In early days when it was thought improper to officiate at the religious ceremonies of the Śûdras[1] the śûdras would have had no family priests and consequently they did not belong to any Gotra. And though in course of time Brâhmaṇas have been induced to become family priests of that class, and the śûdras have in some places, as in Bengal, got themselves affiliated to different Gotras, yet that is not considered sufficient to make the above prohibition applicable to them.

1 Dr. Bannerji's Marriage and Strîdhana, p. 59, 1879 edition.

Intercaste Marriages

Under the texts and generally under the Hindu Law, the general rule laid down is that the parties to a marriage should belong to the same Varṇa, but if a mixture of the Varṇas is contemplated, then among all the four Varṇas, viz. Brâḥmaṇa, Kṣhatriya, Vaiśya and S'ûdra, mixed marriages may take place and will be regarded as valid only if they are of the *Anuloma* character i. e. if it is between a male of each one of the upper orders and a female of each one of the subsequent orders. Thus, a Brâḥmaṇa may have four wives, viz. a Brâḥmaṇî, Kṣhatriyâ, Vaiśyâ and Sûdrâ; the Kṣhatriya, may have three wives, viz. a Kṣhatriyâ, Vaiśyâ and Sûdrâ; the Vaiśya may, have two wives,—a Vaiśyâ and S'ûdrâ; while the Sûdra only one viz. a Sûdrâ[1]. These are called Anuloma Marriages. But mixed marriages may also be possible in the inverse order, i. e. a Brâḥmaṇî wife and a Kṣhatriya or Vaiśya or Śûdra husband. These are characterised as the *Pratiloma* marriages, and under the Hindu Law are regarded as invalid; while an Anuloma marriage is tolerated.[2]

As a consequence of this rule of mixed marriages, it may happen that the right of intermarriage may be exercised to its full extent so that a Brâḥmaṇa, may marry four wives severally belonging to the Brâhmaṇa, Kṣhatriya, Vaiśya and Śûdra varṇas. In such a case the rule as regards their status may be inferred from the text of Yâjñavalkya II–125, which gives the shares to the sons born of such marriages, and also from the texts dealing with the Dâsi and Dâsi-Putras in verses 133 and 134 of the same chapter. The combined

1 See Yâjñavalkya Âchâra v. 57.

2 प्रतिलोमा धर्महीनाः Gautama IV. 25.

result of these texts is that the interests of persons connected by such marriages are proportionate to 4 : 3 : 2 : 1. The marriages in all the cases, where they are of an Anuloma character, are certainly valid and the status of a wife becomes established for the women thus married. Therefore, while the mixed marriages have been treated as valid, although not with the same degree of approval as in the case of marriages between members of the same Varṇa, yet a secondary position has been given to marriages between persons of different Varṇas. For Yâjñavalkya[1] describes the issue of a Savarṇa marriage as Sajâtîya, and that of an Asavarṇa marriage as Saṅkarjâtîya, if not a Vijâtîya. Bearing in mind the fact that the first three orders, viz. Brâḥmaṇa, Kṣhatriya and Vaiśya, appear in the Aryan stock at a late stage and that in the most early periods there was no discrimination based on the Varṇas, the intermixture of the first three Varṇas is tolerated with some indulgence; but both Manu and Yâjñavalkya and others following are quite positive in regard to the question of the extension of the *jus connubium* to the members of the fourth order, viz. the Sûdras who, represented the local inhabitants of the countries visited by the Aryans, and who were assimilated in the Varṇas under the general tendency of the Aryans for assimilation. In spite of the assimilation, however, the stiffness and rigidity against any further concession was stoutly maintained and is visible in the rules in this behalf. For when Yâjñavalkya declares a ban upon a marriage with a Śûdrâ wife, he is not blind to the growing signs of the times in favour of such marriages, which, in spite of the emphatic opinion against them expressed by Manu,[2] were gaining ground, and so he thought it necessary to support his opinion against such marriages

1 सवर्णेभ्यः सवर्णासु जायन्ते हि सजातयः Ch. I, 90.

2 नाधिकं दशमाद्ध्याच्छूद्रापुत्राय धर्मतः Ch. IX, 154.

by a reasoned statement. He thought that a mere injunction of an arbitrary character would no longer appeal to the reasoning minds of the people, and therefore resorting to an Arthavâda he says[1] : "If you ask my opinion as to whether a wife should be taken from the Śûdra Varṇa, I declare that it is not approved of me, because a man himself is born in her". Moreover, this caution against intermarriages is further intensified by an enlargement of the responsibility of the husband for the crimes of a wife be she a *savarṇâ* or an *asavarṇâ*, thereby intended to bring about a qualitative elevation of the wife in tune with that of the husband.[2] All this is indicative of the persistent attitude of rigidity and stiffness against marriages with Śûdra women. Therefore, although the marriages are legal, and the wives will have the status as such under the marriages, there is a discrimination as regards the position of the issue. The texts declare that failing a *savarṇa* son, a son of the Kṣhatriyâ or the Vaiśyâ wife although an *asavarṇa* may be regarded as in the position of a *savarṇa* son in the matter of partition, inheritance etc.; but even there in the case of a Śûdrâ's son, the utmost that is permissible for him under the Hindu Law would be a tenth part of the estate and nothing more.[3]

Rights Inter se

The next stage in the examination of the rights of women is that of coverture, *i.e.* their mutual position during the married life. After her admission to the home of the husband, she is placed on a footing of equality with him.

1 Ch. I. 53

2 See Yâjñ. Prâyaś. III. V. 256 and Mitâkṣharâ p. 1769 and also III. 287-307. pp. 1906.

3 Manu. IX. 154. See *Natha v. Chhotalal*, 32 Bom. L. R. 1348, where this was extended to a brother's son.

The well-known rule of Pâṇini[1] is strong evidence of this footing of equality existing between the husband and the wife. There are certain rights and obligations, however, between the parties after marriage. The first is that the couple should mutually treat each other with respect and consideration. The second is that there is joint ownership between the wife and the husband of the property, and there is identity of interest between the two. The Sanskrit literature is full of rules for a harmonious and ideal married life and practically the same conditions hold in the case of the Hindu married life; for example, there are corresponding rights and duties existing between the husband and the wife, beginning with the vow taken at marriage. There are passages in the Vedic literature and subsequent works which bear out this mutuality of obligations between the couple. In short, a sort of a life of 'give and take' is recommended to the couple.

Conjugal Rights and Duties

But the ideal recommendations are not always strictly followed in practice, and sometimes departures, and unhappy departures, come to be noticed. In such cases, rules have been laid down. The first rule is that the husband should abstain from all cruelty to the wife; the corresponding duty of the wife is that she should be dutiful and devoted to the husband and his interests. Shortly stated, so long as the wife is carrying on the duties of the household and is obedient to the husband and otherwise her conduct is unobjectionable, the husband cannot take another wife in substitution for her. If he takes another wife, then according to the rule of Yâjñavalkya[2] he is to be mulcted in one-third of

1 पत्युर्नो यज्ञसंयोगे

2 Ch. I. 76.

his property besides other orders as the Court may pass ; and in the case of a husband who is moneyless, the law enjoins upon him the duty of providing maintenance for the wife.

Cruelty has several phases, e. g. it includes adultery with other women, admission of mistresses into the house, personal ill-treatment of a harmful character, habitual drunkenness, habitual beating of the wife, and conduct of a like nature are held to be instances of cruelty. In such cases, as the Hindu marriage is indissoluble, the wife has the right to demand separate maintenance and residence.

One of the most important factors in the conjugal rights and duties between a couple above referred to is what is known as the *right of sexual intercourse*. The husband has the right of demanding enforcement of conjugal duties against the wife. There have been a number of cases, as reported in the Law reports, where this has been laid down, but the texts also bear testimony to the corresponding right of the wife to demand a similar compliance from the husband.[1] The Taittirîya Saṃhitâ bears this out. It appears from the episode therein that there was a struggle between the sexes, especially between husband and wife, as regards the enforcement of conjugal duties when demanded by the wife.[2] According to this episode, which bears evidence of a long and continuous struggle between the sexes, Indra, representative of the male side, was compelled to yield to the demands of women for compliance with their requisition for conjugal duties. There was therefore a mutuality in this respect and neither party could escape from a demand in that direction when made. A case had arisen in the Bombay High Court where a curious defence was set

1 See Yâjñavalkya Smriti, Âchâra. verse 81 and the Mitâkṣharâ thereon.

2 See Taittirîya Saṃhitâ II, VI 6. Gharpure's Translation of the Mitâkṣharâ, Vol. II, part I, pp. 210-11.

up on behalf of the wife, viz. of physical malformation. It was pleaded in defence to the suit by the husband for restitution of conjugal rights that the defendant wife was suffering from physical malformation and therefore she could not be of any use even if the decree were passed against her. The plea was not accepted, the Judge holding that it was not merely the physical side of the sexual act that was contemplated in suits for restitution of conjugal rights, but there are other aspects, viz. social and intellectual[1] of the married life which either party has a right to demand.

Mutual Rights over each other's Property

The texts lay down rules and circumstances when either the husband or the wife may appropriate the other's property, viz.

> "In times of famine, for a religious charity, or in case of a disaster, as e. g. when there is imprisonment etc. the husband may appropriate the wife's property and he need not pay it back. However, if he makes an unjustifiable alienation or appropriation, then he is bound to return it with interest."[2]

The mutual right of representation, accorded to the couple during coverture, is also part of the rights and obligations of the husband and wife during their married life, especially in the case of those castes and communities where the wife generally represents the household including the husband. Whatever is done by the wife is regarded as done by the husband and the family when done by the wife representing the group.[3]

Mutual Liability For The Debts

Under the Hindu Law, ordinarily a husband is not liable for the debts of a wife, nor conversely is the wife

1 *Purushottamdas v. Bai Mami*, 21 Bom. 610.

2 दुर्भिक्षे धर्मकार्ये च व्याधौ संप्रतिरोधके। गृहीतं स्त्रीधनं भर्ता न स्त्रियै दातुमर्हति॥

3 Yâjñ. II. 48 p. 788. See Yâjñavalkya, II. 45, 46, 48, 49.

liable for the debts of the husband unless contracted for the benefit of the family, or unless the debt is undertaken to be paid by the wife.[1]

Among the Hindus, 'once a marriage always a marriage' is the rule. Duties once conferred by marriage are indissolubly connected with the individuals entering into it. Therefore, the ordinary and general rule of Hindu Law is that marriage is indissoluble. This rule is sometimes departed from in cases where under a special usage the right of separation or divorce is allowed. But under the ordinary Hindu Law divorce is not permissible in marriage.

Statute Law Regarding Marriage

The most important statutes affecting the status of Hindu women, among others, are the following :—

(1) The Special Marriage Act III of 1872 as amended by Act XXX of 1923.
(2) The Child Marriage Restraint Act XIX of 1929, otherwise known as the Sârdâ Act.
(3) Hindu Widows' Remarriage Act XV of 1856.
(4) The Ananda Marriage Act VII of 1909.
(5) The Indian Christian Marriage Act XV of 1872.
(6) Married Women's Property Act IV of 1874.

Of these Acts, some have a direct bearing upon the rights of Hindu Women, while others indirectly affect these. Those which have a direct bearing are: (1) the Hindu Widows' Remarriage Act XV of 1856, and to some extent (2) the Special Marriage Act.

1 अविभक्तैः कुटुम्बार्थे यद्दत्तं तु कृतं भवेत्। दद्युस्तद्विक्रियनः प्रेते प्रोषिते वा कुटुम्बिनि ॥ ४५ ॥

न योषित्पतिपुत्राभ्यां न पुत्रेण कृतं तथा। दद्यादृते कुटुम्बार्थान्न पतिः स्त्रीकृतं तथा ॥ ७६ ॥

The Hindu Widows' Remarriage Act XV of 1856 was intended to afford facilities for the marriage of a widow. For whatever the ancient law may be, it had long been established as a custom among the higher castes that a remarriage was not permitted for a widow ; at least the paucity of instances of widow remarriages raised an impression that they were prohibited by the Hindu Law. To validate a marriage of a Hindu widow, the Act XV of 1856 was passed, but to placate the intensive opposition which the contemplated legislation evoked from the people, section 2 was enacted : "All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall, upon her remarriage, cease and determine as if she had then died ; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same".

Now the Act was intended as a piece of enabling legislation to remove the doubt as to the legality of a widow's marriage and evidently it was meant for those communities among whom remarriage did not prevail by usage or custom. Obviously, therefore, it should be deemed to have left alone those communities among whom remarriage was customary and permitted. The actual effect of the Act, however, has been, according to the interpretation put by the Courts in Bombay and Calcutta that not only those communities among whom remarriage was not permitted, but even those communities among whom it was permitted by usage have been held to have been covered by the enactment of this statute. The result has been that after the passing of the Act, if a member of a community, e. g., the

Chambhar community which permits remarriage, married a widow of his caste, the widow incurred forfeiture under clause 2, which before the passing of the Act she did not incur. It is only the Allahabad High Court which has taken an exactly opposite, and it may be submitted a correct view, and the Courts of Oudh, Sind and Lahore have been showing an inclination in the same direction. It is, therefore, a strange irony of fate that an enactment which was intended to give relief to a small section of the Hindu community—for evidently those groups of the Hindu community who allow remarriage by custom are comparatively large—has been found in actual working to be a source of hardship to the larger portion.

No doubt the courts have taken great care to see that the effect of this interpretation did not extend beyond the strict interpretation of the wording of the section, with the result that while a widow who had succeeded as heiress to her husband or to her son as a mother and subsequently remarried, she would forfeit the estate which she had taken as heir of the deceased, still if after the remarriage her son by the first husband died, then the section has been interpreted as not affecting her right of succession to the property of the son.

Very recently the question, rather a curious one, as to the Gotra of a widow for the purpose of her remarriage was considered by the Allahabad High Court.[1] A Hindu widow after the demise of her first husband was married a second time to a man whose Gotra did not agree with that of her father, and an objection was raised as to the validity of the marriage on the ground that after the demise of the husband she was relegated to her former position, viz. as the daughter of the father, and therefore the Gotra of the

1 *Radha Nath Mukerji v. Shaktipado Mukerji*, 58 All. 1053.

father being incongruous with that of the new husband the marriage was invalid. Of course the question of the Gotra for a remarriage did not arise at all. Because whatever the intrinsic character of the question and the customary Hindu Law may have been, it was quite clear that a remarriage of a widow was validly treated only by the statute passed by the British Indian Legislature which did not lay down any condition as regards prohibition on the ground of Gotra. But still the Court went into the question and held that for such purposes the Gotra to be considered was not the Gotra of the father but of the husband. Apparently, the Court impliedly held that death did not dissolve the status which was initiated by the first marriage. Very recently also it has been impliedly held that after remarriage the widow ceases to be the widow of a husband and therefore she could not be treated as such under the ruling in *Lallubhai* vs. *Mankuvarbai*,[1] whereby in the Bombay Presidency, after each line of the Gotraja Sapiṇdas is over, the widows of that line have been given the right to succeed before the next line of the Gotraja Sapiṇdas could come in.

The next enactment which affects the rights of the Hindu women is the Special Marriage Act, which was originally passed in 1872 and subsequently amended by Act XXX of 1923. The effect of this Act is that it permitted intercaste marriages among Hindus; that is to say, in addition to the particular type of intercaste marriage known as the Anuloma, which was permitted by Hindu Law, even the Pratiloma marriage is made valid. This Act further validated marriages which would be invalid under the Hindu Law if they offended against the rules regarding Gotra and Pravara. Persons who could not marry under the Hindu

1 I. L. R. 2 Bom. 388.

customary Law, if their Gotra and Pravara did not tally, can marry under this Act. Another result of this Act is that while under the Hindu Law persons marrying in disregard of the prohibition on the ground of consanguinity are deemed validly married, under this Act such marriages cannot be regarded as valid.[1]

Further it automatically effects a partition in the family to which the husband belongs. If he is a member of a joint Hindu family, he brings upon himself the position of a separated member.

The special advantage of this Act as to Hindu women is in those provisions of the Act which declare the marriage under the Act as strictly monogamous, so that neither a person whose wife is living can marry under this Act, nor a person who is married under this Act can marry another wife while such marriage continues and is not dissolved by proceedings in divorce under section 17. The other sections of the Act do not concern Hindu women and therefore they need not be mentioned.

A question has been raised as regards the legal consequences of marriages solemnised under this Act as also under the Vedic rites. The Bombay Presidency Social Reform Association felt a doubt as regards the legal position of parties marrying as above and, therefore, they circulated a number of questions for opinion from the public. The questions formulated were these :—

(1) Is it permissible in law for persons who are already married under the Vedic rites to go again through the form prescribed by the Special Marriage Act?

(2) By what law would the rights, liabilities and succession of persons so married (first according to Vedic rites and then again under the Special Marriage Act) be governed ?

1 See Special Marriage Act, § 2, cl. 4.

(3) Would it make any difference if the form of marriage under the Special Marriage Act precedes the Vedic rites ?

The answers to these questions were variously worded, but the obvious answer as regards the first question would be in the negative, because the Special Marriage Act requires a declaration to be made by the parties—"That each is at the present day unmarried." It is only in the case of a marriage which offends against the prohibitory rules of Hindu customary Law that such a declaration could be made, then and in such a case the first marriage not being a marriage at all the marriage celebrated under the Act would not be characterised as a second marriage but as the first marriage. If the first marriage be valid under the customary law, the parties would be making themselves amenable to the charge of making a false declaration. In the alternative of the Hindu marriage being invalid, such a marriage may take place.

Then, as regards question No. 2, the answer would be that they would be governed by the Hindu Law. They cannot be governed by the rules or the provisions of the Act.

As regards question No. 3, per contra to 1 and 2, the answer obviously would be if the parties are married under the Special Marriage Act, then the performance of Vedic rites is a matter of option as it would be a surplusage. Under some of the provisions of the Hindu Law, such a marriage may be taken as a Gândharva marriage, as obviously it is a marriage by mutual choice of the parties. According to the well-known rule of Hindu Law in the text of the Devala Smṛti : "Whatever the form of the marriage may be, the Homa and other ceremonies should be performed," but the legal effect of the performance of the Homa and the Saptapadi would be nil if the marriage under the Special Marriage Act had preceded that under the Hindu rites.

Another result of the Act, not contemplated by the framers and leading to an anomaly may be noticed. The Act prescribes certain declarations, one of which is that the declarant is or is not a Hindu, Buddhist, Sikh or Jaina. One who makes a declaration that he is a Hindu etc. is affected by the consequences stated in ss. 22 to 26, according to one of which, succession to his property would be governed by the Indian Succession Act and not the rules of Hindu Law (S. 24), while the one who does not make the declaration and marries under the Act, is left alone to be governed by Hindu Law.

The third enactment which affects Hindu women is the Child Marriage Restraint Act XIX of 1929. Under this Act a minimum limit of age for the marriages of men and women belonging to the community has been laid down, viz., 18 in the case of boys and 14 in the case of Girls.[1]

The Ânanda Marriage Act

Another form of marriage which is resorted to by persons desirous of avoiding the inconvenience under the Hindu Customary marriage rites or under the Special Marriage Act is known as the Ânanda Marriage. A special rite under the Sikh persuasion in which the ceremony consists in the recitation of certain texts called Ânanda texts is followed. Such a marriage may be celebrated even with a concubine.[2] This Act is resorted to as a convenient medium by parties for whom the other methods are not suitable.

Married Women's Property Act, 1874

This Act which is primarily intended as supplementary to the Indian Succession Act makes special provision in regard to protective relief concerning an Insurance policy of the husband.

1 See * 2 cl. (*a*).
2 See *Jagga Mohan* v. *Saumcoomara*, 2 Morley's Digest 43

CHAPTER IV

Sonship

The next topic arising under the law of Status in which the rights of women are concerned, is the law of Sonship, including the law of Adoption. Hitherto has been considered the position of a wife after marriage, and apart away from the child born of the marriage. If a child is born, whether a son or a daughter, there is a joint responsibility on the part of the husband and wife in regard to it, although the husband has the paramount right. According to the fundamental conception of Hindu Law the object of marriage is the procuring of issue which secures the perpetuation of the lineage and ensures the offering of the funeral cake to the ancestors of the family[1]. Therefore when nature is not propitious or responsive in the form of the birth of a child, artificial modes of creating sons have been stated in the Śâstras. The Hindu Law enumerates as many as 14 varieties of sons, viz., the Aurusa or the legitimately born son, and 13 others in addition. As observed above, if nature were not propitious, artificial means were resorted to and what is called the Niyoga or the Levirate, viz., the procreation of sons with the help of others, ordinarily a younger brother of the husband or a Sapiṇḍa relation, or some other person, was the method resorted to. The Mahâbhârata and earlier works evidence instances of this custom of raising issue, the more notable instance of which is the ruling family of Hastinâpura. Dhṛtarâṣhṭra and Paṇḍu were begotten by this method; they were begotten by Vyâsa a Sapiṇḍa. And the five Pâṇḍavas were sons procreated by others on Kuntî and Mâdrî the wives of Paṇḍu.

But this system of raising issue on the wives of others which gradually fell into disrepute, and finally into disuse,

1 पिण्डसंस्थापनार्थाय नामसंकीर्तनाय च।

was not openly resorted to, and its place was taken by the method known as adoption. So far as women are concerned, the following are the points which require special mention and consideration in regard to the Law of Adoption :—

(1) Who may adopt ?
(2) Who may give in adoption ?
(3) Who may be taken and given in adoption ?

As regards the first "who may adopt," as the object of adoption is the securing of an issue which is a substitute for either a natural born son or a procreated one under the method above referred to, it was the joint right of the husband and the wife, but as generally it is the husband's right that predominates in regard to a child, it is to the husband that the boy is adopted. Therefore during the life-time of the husband the wife cannot adopt, except with the permission or consent of the husband, in cases when he is unable himself to participate in the ceremony or when otherwise he is prevented from taking part. Further, the adoption although made by the wife is to the husband and not to herself. According to Hindu lawyers there is a double advantage in this convention, viz., if the son is of the husband, the wife being the half of the husband, she comes to have the benefit of the husband having the son, being regarded as the mother of the son. In this connection, where the husband has more than one wife the son is regarded as the son of only such wife as has been invited by the husband to officiate with him jointly at the time of the ceremony of adoption. The other wives are only step-mothers. In a case from Madras where the husband made the adoption when he had no wife and subsequently had a wife, it was held that the adopted son should be regarded as the son of the wife i. e. the one who had died before the adoption or of the other whom he married after adoption. In other words, in the absence

of a special designation or special evidence, the wife of the husband is regarded as the mother of the boy, a circumstance which usually occurs in regard to the boy as a result of her being the wife of the adopter.

It has been stated above, that there can be no adoption by a woman to herself. This is on the assumption that a woman under the Hindu Law will never remain unmarried. But a time has arrived when the question whether an unmarried Hindu woman could adopt has to be considered. In so far as the case of an unmarried man is concerned, it has been held that a bachelor may adopt.[1] Can therefore a spinster or a maiden adopt? The answer would appear to be in the affirmative. If the object of adoption, as now authoritatively declared in the well-known Privy Council case of [2]*Amarendra Mansingh v. Santan Singh* be the securing of celestial bliss for the adopter, and if an unmarried male, without undergoing the ordeal of marriage, could be permitted by law to have the benefit of this bliss, there is no reason why an unmarried woman should not have the benefit of that privilege. No doubt after marriage, during coverture or even during widowhood, the adoption if made by a wife or widow would be to the husband; but when there is no husband and there is anxiety nevertheless to be represented by some one who would perpetuate the name of the lady, there appears to be no reason why a woman should not be allowed to adopt. This is one among many points where the intervention of the legislature may be needed in the interest of the avoidence of all doubts on the point.

Further, it has been stated above that the law of adoption takes note of a son as the object of adoption. As the

1 *Gopal v. Narayan*, I. L. R. 12 Bom. 329.
2 60 Ind. Appeals 242.

prevailing sign of the times, a case may occur where instead of the son, a daughter may be taken in adoption. In fact some of the texts have made provision for the adoption of a daughter, although under special circumstances, and in the case of special contingencies, e. g. with a view to avoid the obstruction to a marriage on account of Gotra or Pravara, the method of giving the girl in adoption is resorted to. In the Dattaka Mîmāṃsā by Nanda Pandita,[1] the author endorses the view that such an adoption may be made. In a case in Bombay it was however held that the daughter cannot be adopted.[2]

This has, no doubt, been stated on the rulings, but it would appear that, having regard to the prevailing tendency which is gradually exhibiting itself in an intensive form on the part of the women to remain unmarried, a time will come when women, who wish to remain unmarried, may desire to have a companion in the form of a child. Obviously if such a woman exhibits a greater partiality for a girl as her adoptee, than for a boy, the preference is quite intelligible. Here again would be a ground for the legislature to make provision in anticipation of the actual happening of a contingency as stated above.

The two questions as to who may adopt and who may be adopted have thus been discussed. The third question is "who may give in adoption ?" To that also the answer is given on the same lines as above, viz. that the father and the mother have the right, both having equally contributed to the birth of the son, to give the boy in adoption.[3] And the right is in them alone. The question would arise.

1 Ch. VII. 11. 6.

2 *Gangabai* v. *Anant*, 13 Bom. 690.

3 See Vasiṣṭha, XV. 1-3. Manu IX. 168.

"Has the wife power to give when the husband is living, without his consent, or in spite of his dissent?" It has been answered in the negative on the general ground that it is the father who has the paramount authority over the child. After the death of the husband, however, the wife is solely entitled to exercise the power of giving in adoption, but her right is lost by her incurring an incapacity, such as by remarriage which, in effect, brings about a severance of her connection with the family of her husband, and terminates her right of *patria potestas* which she had over the son after the husband's death.[1] It was indeed held in *Putlabai v. Mahadu*[2] that the widow did not forfeit her right in this behalf on account of remarriage, but that case has been overruled by the full Bench case noted above. The result, therefore, has been that so far as the right of the Hindu woman in the matter of taking or giving in adoption is concerned, it is an appendage to that of the husband.

The most important point under the law of adoption in which a Hindu woman is concerned, and which has recently set the courts into considerable activity, is the power of a widow to adopt. It has been stated above, that after the death of the husband it is her sole jurisdiction to give or to take in adoption. The next question is: Are there any limitations to this power of the widow to adopt? In a long series of decisions covering the period almost of half a century the Courts in India and in England have been in agitation over the question with varying fortunes in favour of and against the widow. With a view

1 See *Panchappa* v. *Sanganbaswa*, 24 Bom. 89, and *Fakirppa* v. *Savitrewa*, 23 Bom. L. R. 482 (F. B.)

2 33 Bom. 107.

to have a clear idea as to the position of the widow in regard to adoption after the husband's death, it is better to visualise in a summary form the several shades of opinions held in India as regards the power ; these are as under :—

(1) According to the Maithila School in the Provinces of Bihar and Orissa, a woman can adopt only with the consent of the husband ; *ex hypothesi*, therefore, in the case of a widow, the husband being physically non-existing, it is not possible for her in those Provinces to make an adoption. But this refers to the Dattaka form only. It is this peculiarity of the law in this Province that is responsible for the prevalence of the Kṛtrima form of adoption over there.

(2) According to the Law of Bengal, if the husband is not living, but has left authority in favour of the widow to adopt, the widow has power to make an adoption under that authority. This is also the law in the United Provinces.

(3) Under the law in the South, i. e. the Madras Presidency, where the husband is not living and has even not left authority for the widow to adopt, such authority may be supplemented by the consent of the Sapiṇdas, so that in the absence of an authority from the husband, the Sapiṇdas' consent would be sufficient to enable the widow to make a valid adoption.

(4) In Bombay, however, it is only during the life-time of the husband that his consent is necessary if the adoption is made in his life-time. After his death, under the rule that the husband and the wife are equally entitled in the matter of the issue, which is of the joint ownership of both, the widow's right in the matter of adoption is independent and does not depend upon any authority from the husband, unless of course the husband has specifically prohi-

bited her from making an adoption. This is on the assumption that the son is of the husband; and, if he is so particularly anxious not to be represented by a son, it will not be open to the wife to foist an heir upon him. This is with reference to a separate family.

The law in Bombay as regards the power of a widow to adopt in a joint family had been that if when the husband died as a member of a joint family and he had left authority to his wife to make an adoption, the wife could adopt. If, after the death of the husband, no authority was left by him, but the members of the joint family agreed that an adoption should be made, then the widow could make an adoption. That was taken to be the position in the law before 1924. In 1924, however, the Privy Council, in an appeal from the Central Provinces in regard to an adoption in a family which was governed by Maharashtra Law, decided that it is the inherent right of a widow in Western India, according to the doctrine prevailing in the Presidency, to adopt to her husband, whether the husband was a separated member or the member of a joint family.[1] This decision of the Privy Council caused a great stir in this Presidency, and the Bombay High Court in a number of cases decided in that year[2] held that the rule till then prevailing in the Presidency of Bombay under the ruling in the case of *Ramji v. Ghamav*[3] was left untouched by the Privy Council decision referred to above. The point was ultimately referred to a Full Bench in the case of *Ishwar Dadu v. Gajabai*[4] and the Full Court held that the case of *Yadav v. Namdev* did not affect the Bombay

1 See *Yadav* v. *Namdev* 48 I. A. 513.
2 See 24 Bom. L. R. 96; 836; 1112.
3 6 Bom. 498.
4 50 Bom. 468.

law, the majority of the Court holding that the dicta in the Privy Council judgment in the case of *Yadav vs. Namdev* were obiter, and were therefore not binding. Crump J., however, held, dissenting from the majority, that the opinion expressed by the Privy Council was not obiter but perfectly relevant, and therefore binding.

This is one of the instances where the judicial courts have been found to exhibit a peculiarly unsympathetic and unappreciative psychology in the matter of women's rights ; for whatever the merits may have been, here was an opportunity afforded by a deliberately declared decision of the Privy Council in which a right was given in favour of the widow of a joint Hindu family of making the importance of her presence in the family felt particularly by those members who would be in danger of the loss of property by being unsympathetic or hostile towards her. For exidently, the right of adoption was a very valuable right, a strong weapon in the hands of a widow who, otherwise, was a helpless member of a joint family, treated with scant or no courtesy and even with rudeness. It is the sanction which primarily conduces to a law-abiding mentality. It has been well said that the best book on morality is the Penal Code. For, unless there is a consequential disadvantage or loss which in the eyes of the delinquent are sure to follow as a result of his conduct, in other words, unless there is some restraining influence which would keep the vagaries of the family members in check, it is not to be expected that the widow's position in a joint family could be respected or even treated with consideration. It must be in the experience of every one, and particularly of the lawyers, that the power of adoption declared by the aforesaid Privy Council decision has been a very valuable and powerful weapon in the hands of widows to induce down the vagaries of the members of the joint

family. In spite of these considerations, the Bombay High Court persisted in its opposition to the decision with the result that some years afterwards when in another case the same question arose, the Bombay High Court, following the full Bench decision in *Ishwar v. Gajabai*, decided against the validity of the adoption. Luckily for the widows in the Presidency, the interest at stake in the case was sufficiently large to enable the parties to take it to the Privy Council for a reiteration, — the reiteration of the principle laid down by their Lordships in the case of *Yadav v. Namdev*; and their Lordships of the Privy Council did affirm it, and with a degree of deliberation, holding that what they held in the case of *Yadav v. Namdev* was not in the nature of an obiter, but it was a deliberate and considered expression of their views.[1]

In the same year another case went up to the Privy Council on a point possession, in which the right of the widow came in for a consideration. Sir George Loundes, pronouncing the opinion of the Board, in an elaborate judgment, and, after an exhaustive discussion of the original authorities, held that "it is the primary duty of a Hindu widow to secure to her Lord the greater possible heavenly bliss, the highest religious benefit that she could secure by her acts here, and the best way of doing it is by supplying an heir who could perform the obsequies, for which a yearning has all along been expressed[2] by all devout Hindus. By a reference to the passages in Manu and other texts, Sir George Loundes declared that the right of a widow in regard to adoption is irrespective of the possession or otherwise of property by her. In this the Board confirmed its opinion expressed in the case of *Pratapsingh*

1 See *Bhimabai* v. *Gurunath Gawda*, 60 I. A. 25

2 अपि नः स कुले भूयाद्यो नो दद्याज्जलाञ्जलीन् ।

v. Agarsingh.[1] The result has been that all the cases decided in this Presidency, wherein it was held that it is only the widow of the last male holder who had the power to adopt, stand automatically overruled and now the rule has been established that every widow in a family, whether joint or separate, has the inherent right to make an adoption to her husband, the only exception being "where the husband's needs for the spiritual benefit had been satisfied either by the birth of a son or he had died leaving an heir to perform the obsequies." Therefore the universal validity of adoptions by widows has been declared by this decision.

Effect of Adoption

The only question that remains over is the effect of the adoption, and it may be stated shortly thus : The adoption may be valid; what is its effect upon the vesting or divesting of estates ?

The question was answered in the case of *Vijaysinghji v. Shivsinghji.*[2] The effect of adoption so far as it concerns the woman is that immediately after she adopts a son, under the present law, to her husband, she deprives herself of the right to the possession which she had of the husband's property before the adoption. The adopted son is the resemblance[3] of a son born and, therefore, as a necessary incident of law, he takes the position of such a son. In other words, the widow adopting a son has the credit of introducing him to all the rights and privileges of one born.

As regards the further offshoot of the result of adoption, and having a greater bearing upon the rights of others,

1 46 Indian Appeals 97.
2 62 Indian Appeals 161.
3 पुत्रच्छायावहः ।

there has been a sort of a revolution introduced by the decision of the Privy Council. For the necessary consequence of the ruling in the case of *Amarendra Mansingh*[1] is that every widow has the right to adopt a son to her husband, the reason in support of this rule being that it is the duty of a widow to secure the greatest possible spiritual welfare for the departed soul. This being the reason, in all cases where the full degree of spiritual welfare has not been secured to the husband, the widow has a right to adopt. *Per contra*, her right of adoption would be gone if the spiritual welfare has been secured to the husband. Therefore, excepting those cases where the spiritual welfare has been secured to the husband, the widow has a right to adopt, which, in other words, means that an adoption in all these cases is valid.

The further result of this adoption is that not only the widow is deprived of her position in regard to the family property, but the position of other members also is affected. In this respect, the ruling in *Vijaysinghji v. Shivsinghji*[2] has added another course of diversion. Before this ruling came out, the rule in Bombay was as laid down in the cases of *Chandra v. Gojra*,[3] and *Vithoba v. Bapu*,[4] viz. that when an estate has once vested in another person, that estate, would not be divested by a subsequent adoption. In other words, upto the decision in *Amarendra Mansingh's* case, the adoption would be valid but the estate would not be divested.

1 60 I. Appeals 242.

2 62 I. Appeals, 161.

3 14. Bom. 463.

4 15. Bom. 110.

A further advance in the matter has been made by the ruling in *Vijaysinghji's* case, according to which if the adoption, although it is not made to the last male holder, has the effect of supplying a direct lineal male heir to the last male holder, then even if the estate is vested in the collateral line, the adoption would divest the estate from that line. This now has been made clear in the Full Bench ruling of the Bombay High Court in *Bala v. Lahu*[1], where Sir John Beaumont C. J. has summarised the effect of adoption.

The effect of adoption, so far as it affects the woman's position, is that as the direct consequence of adoption is to instal the son so adopted into the position of a natural born son, the adopted son acquires the right to question the transactions by the widow during her stewardship within the period covered from her husband's death and the date of adoption. He can question not only voluntary alienations but also alienations for value entered into by the widow.

The Nagpur High Court has gone further and in the recent case of *Draupadi v. Vikram*[2] has held that the adopted son can also question the correctness or otherwise of alienations made even by the male members of the family. This is no doubt the logical consequence of the incident of adoption and of its validity being recognised as above. But even recently, the Bombay High Court has taken an opposite view.[3]

There are two more forms of adoption in reference to which the position of women may be noted incidentally in so far as it is affected by it. These are the *Dwyâmuṣhyâyaṇa* and the *Kṛtrima*. In both the cases the son adopted

1 39 Bom. 382 at p. 414; I. L. R. (1937) Bom. 508 at p. 543.
2 I. L. R. (1939) Nagpur, p. 88.
3 41 Bom. I. L. R. 268.

can retain his position in the family of his birth and at the same time acquire fresh rights under the adoption. Under the first, it is the direct result of the contract between the two families, and under the second it is one of the incidents of the special form.[1]

Anti-Adoption Agreements

Another point which often arises affecting the interests of the adopting widow is as regards her status after adoption when there has been an agreement. Her position without an agreement has been considered before. If, however, there is an agreement—such an agreement usually can be contemplated to take place between the widow on one side and the adopted son on the other, in a majority of cases represented by the natural father, and in some cases by himself if he is major. In those cases where the adopted son is a major, there is no difficulty; for he will be held to be bound by the agreement which may contain any terms whether derogatory of his position as a son or otherwise. There is an estoppel which is created by him against him and it binds him. The difficulty arises, however, in those cases where the agreement is not between the adopted son and the widow, but between somebody representing him as his guardian and the widow. In such cases a difficult position would arise; for, if the agreement leans unnecessarily and at times unreasonably in favour of the widow as regards the right of management, then it has been held that such agreement will not be binding upon the adopted son after he attains majority. The binding character of such agreement has been determined by the reasonableness or otherwise of the conditions. The leading case on this point is *Krishnamurti v. Krishnamurti*.[2] The gist of the

1 26 Bom. 26 All. 40 Bom.
2 50 Mad. 508. (P. C.)

case law is that where the arrangement is for the widow to enjoy the property during her life-time, such an arrangement may be regarded as a fair one, but where under it any other disposition is to take effect after the adoption and has the effect of curtailing the rights of the adopted son, it would not be effective against the son.

Guardianship

Another topic under which the position of the rights of women affecting status requires an examination is the third and the last branch of the law of Status, viz. the law of guardianship. Under all systems of personal law, the King is in theory supposed to be the *Pariens Patriæ*, the parent of parents, as that is not merely a poetic flourish that the great Kâlidâsa, while describing the virtues of a King, has brought out this characteristic,[1] but under the convention which has been fairly established and followed, the parents have been regarded as the guardians by a sort of a delegated authority from the king. Between the parents the father has the paramount right. The right of guardianship, however, falls under two heads, viz. guardianship of the person and of property. As is the case under all systems of laws, until the child is weaned from the mother, the mother has the right to the custody of the child. Afterwards the father, and after the father's death, although the texts recite a number of agnates as having the right to succeed to the guardianship, the mother has been given preference. She may, however, lose this right by an incapacity incurred, such as, by remarriage, a change of religion, or by misconduct either morally or affecting the interests of the minor.

1 स पिता पितरस्तासां केवलं जन्महेतवः । Raghu Vaṁśa I

CHAPTER V

The Law of Property

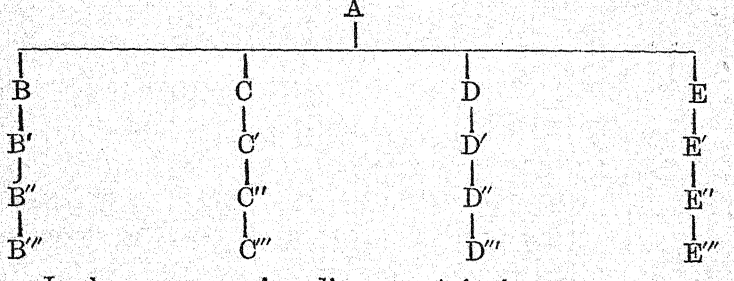
Thus far have been examined the position and rights of women in the domain of the law of status. In regard to the law of property, women may be classified again, as above, under two categories, viz. the daughter and the daughter-in-law. Under the term daughter are included all women belonging to and connected with the family by birth, so that she is regarded in the generic sense as 'a daughter of the family' (कुलकन्या). She may be a daughter of the son, or of the father, or of the grand-father, severally described as a daughter, a sister or the paternal-aunt. Nevertheless with all these variations in their relative positions, all these ladies are the daughters of the family. The other class is as may be conveniently characterised corresponding to the daughter, that of the daughter-in-law (कुलवधू) *Kulavadhû* as opposed to *Kulakanyâ*. The daughter-in-law of the family may also be instanced in the son's wife, the father's wife, or the grand-father's wife; in other words, ladies belonging to and connected with the family not by reason of their birth but by reason of marriage. Here is the maxim of the Roman Law, viz. "The woman is the beginning and the end of a family" well illustrated. Where she begins a new family, she ends an old one.

The Woman and the Joint Family

So far has been considered the position of the woman in connection with the law of Status and its working, viz., in connection with the law of marriage, the law of adoption and the allied topics of minority and guardianship.

At the outset, before considering the aspects of the rights of women that may severally present themselves, it would be necessary and convenient to visualise clearly the incidence of the membership of the joint family with its correlative, viz., the coparcenary. For, it is not every mem-

ber of the joint family that can claim the status of a coparcener; a coparcenary consists of those members who are related to each other in the direct male line of descent or ascent, and the last in descent among whom are not removed by more than three degrees from the highest living male ascendant. In the case of a joint family, it includes members who may not be related to each other in a line of descent or ascent, but who may be agnates related to each other by their descent from a common male ancestor. In this connection, those who are familiar with the terms agnates and cognates will find an easy solution by bearing in mind that all the members of a Hindu joint family are primarily agnates, consisting of males, some of whom are related to each other as coparceners while others have a collateral relationship and are simply members of a joint family. An illustration will bring out the position of the members relatively to each other. This is necessary as the position of a woman as a member of the family will thereby have been fully crystallised by having a clarification of the position of the members generally.



In the accompanying diagram, A is the common ancestor and he has four sons B, C, D and E and B has three sons B′, B″, and B‴; so has each of C, D and E. In this combination of persons each was related mutually while A was alive and he is in a coparcenary relationship with himself and his four sons and their issue to the fourth degree.

As soon as A is out of the field, what once was a coparcenary body consisting of A, his sons and their issue, immediately becomes converted into a joint family, consisting of the four brothers B, C, D and E and their issue, although each one of these four branches of the joint family may be a member of a coparcenary *inter se* with a member of his branch consisting of the highest living male ascendant and the last male descendant to the 4th degree; whereas, taken together with their collaterals it is characterised as a joint family and the continuance of the term coparcenary is only an evidence of the survival of what once had existed. Obviously, therefore, in such a coparcenary body the woman has not much of a right and, further, even in a joint family her position is very much the same. For, while she has rights which arise out of the joint family and its property and which exist against the joint family and its property, she has no rights for taking any active steps or initiative as the male members have. It would be remembered that the four-fold rights of a member of a joint family coparcenary body, are :—(1) the right to enjoy, (2) the right to alienate, (3) the right to encumber with debts, and (4) the right to ask for a partition of the property.

In the case of the women, while the women who are members of a joint family have in a way the right to the enjoyment of the property, their rights are not to any portion of the property, but they arise out of the property; in other words they have no right to ask for a partition or either to alienate or encumber the property as such. Thus their position is distinguished in an essential characteristic from that of the male members.

While, however, the position of the women can thus generally be distinguished from that of the male members of a joint family, there is no doubt that they have

a distinctive status as members of the joint family. Taking the two types of womanhood as stated generally at the outset of these lectures, the daughter of a family and the daughter-in-law of the family, each have their rights, and it is necessary to have an examination of the rights of each of these types by regard to the several positions which arise in connection with the joint family property.

The Daughter

The daughter, until she is married, has a right to be maintained and brought up at the expense of the family. So long as the family is joint, and the members are living together, the daughter of each member along with the sons is entitled to a provision for her upbringing, marriage and maintenance. Not only that, but if a partition takes place, then in such a partition the daughter stands on a level of equality with the members concerned making the partition; the daughter has been given a definite share proportionate to that of the son, who is her brother in the particular instance assumed. But this right would arise only when the male members come to a partition; but as will be stated later on, the women members of a family have no right to actively initiate proceedings in partition. Their right would arise only when proceedings in partition are initiated by male members; and there too when the division is made by metes and bounds, then alone their right for a share would be translated into specific portions of property.

The right of a daughter of a family, next to her being maintained and brought up, is that of being married, and so long as the daughter is not married, she has a right to be maintained out of the patrimony. She has no right to incur debts in her capacity of a daughter as such; if she carries on the management of the family, she may as such mana-

geress incur debts, make alienations, or otherwise dispose of the property under the circumstances and to the extent to which the manager of a joint family has a right to proceed. But apart from this right, the daughter of a family has no such right.

Partition

When, however, a partition takes place and the daughter is still unmarried, the texts provide for a share to be given to her. The quantum of the share has been laid down as the fourth of what she would have got if she had been a son. For example, if a family consists of two brothers and a sister, and the two brothers come to a partition when the sister is unmarried, the partition would be effected by giving to the daughter 1/4th of what she would have got if she had been a male issue. Working out the illustration assumed, the whole property would be divided into 12 shares, 4 each being earmarked for each issue; the first two parts would be allotted to the two brothers and a fourth of the third part would be given to the daughter and the remaining 3/4th of the third part would revert to the corpus to be again equally divided between the two brothers. To put it roundly, therefore, in the example assumed, the daughter would be entitled to 1/12th and each of the brothers to 11/24th part. The case would be further complicated if the family consists of members born of mixed marriages. If a Brâḥmaṇa marries four wives, one each from the four Varṇas, viz. a Brâḥmaṇî, a Kṣhatriyâ, a Vaiśyâ and a Śûdrâ, and has from each wife two issues, a son and a daughter, and after his death a partition takes place between the members, that is to say between the brothers, the corresponding sister of each brother would be entitled to a 1/4th of what the brother of that Varṇa would receive. Thus, in the example

assumed, supposing the property consists of Eighty-thousand rupees, the shares of the brothers respectively would be in the ratio of 4, 3, 2 and 1, and as each branch has two issues, doubling this, each branch would have the following shares–8, 6, 4 and 2– and the share which each one of the daughters of the four wives would be entitled to is 1/4th of what she would have got if she had been a son of that denomination. Thus a Brâhmanî Kanyâ would be entitled to one share (1/4th of 4), a Kṣhatriyâ Kanyâ 3/4th (1/4th of 3), a Vaiśyâ Kanyâ 1/2 (1/4th of 2) and a Śûdrâ Kanyâ 1/4th (1/4th of 1). This is the proportion in which the daughters would take their shares. It would appear that after partition, when such a share is allotted to her, there would be no obligation on the part of the members of the family to make a provision for her marriage.

A question often arises as to the position of daughters who are not on a place of equality with the male members of the family, but occupy a subordinate or derivative position. Thus, if three brothers and two sisters make a joint family and the three brothers come to a partition, the brothers at the time of partition have either to make provision for the maintenance and marriage expenses of the sisters until they are bestowed in marriage, or they are to allot shares to their sisters as above. The question often arises and is pressed for the decision of the Court, viz., what would be the position of the daughters of the brothers who come to a partition ? For example, of three brothers B, C and D, with sisters E and F, if B has a daughter, can B ask for the provision of the marriage of the daughter? The answer has been given, and correctly given, that he cannot. It is incumbent upon each father to make provision for the maintenance and marriage of his daughter, especially when he has ancestral property. In such a case as has been assumed above, the claim is often made on behalf of a

brother with a daughter, that while the family is joint the family makes provision for the marriage of daughters, and it is only an accident that the family came to a disruption which deprives the daughter of the benefit of a provision for her marriage. Cases often arise where by a very brief interval some of the daughters of some brothers happen to be disposed off in marriage before the family comes to a partition and obviously such marriages are undertaken and provided for by the family as a whole. While within a short interval after such marriage if a partition takes place in which the brother, who may have a daughter to be married, naturally lays claim to a similar provision for the marriage of his daughter, such claim is obviously negatived, and for very good reasons. While the family is joint, there is the benefit of the incident of survivorship, but as soon as the family becomes separated, there is no benefit of survivorship and if any accident occurs in regard to a member of a separated branch, the advantage of survivorship accrues to the benefit of the individual members of the separated branch and not to the whole family. It is therefore quite clear that the daughters of the separated members can have no right to be provided for separately when their corresponding males in the ascendant have got their own quota in the general partition.

So far with reference to the position of the daughter in a joint family.

Daughter-in-Law

The other type of woman in the joint family is the daughter-in-law, i. e. *Kulavadhu*, the woman whose connection with the family is not by birth but by marriage. Such a woman, although generally characterised as a daughter-in-law of the family, may be met with in the following forms, viz. the daughter-in-law, the wife, the mother, the grand-

mother as also the step-mother, step-grand-mother and so on. These are the representative types of women belonging to the family not by birth but by marriage.

Taking these types in their order, the daughter-in-law has no distinctive rights as such while her husband is living. She may have only such rights as are generally conceded to a wife as against or relatively to a husband, but beyond that during the life-time of the son the daughter-in-law's position is almost merged into that of her husband. After the death of the son, however, she becomes characterised as a *widowed daughter-in-law*, and this person in Hindu Law has been having an extremely anomalous position. By a chapter of accidents, one is almost inclined to say, in a series of decisions the proposition has been laid down that while the widowed daughter-in-law has the right to be maintained out of the ancestral property, she has no right of maintenance or of any other character against the father-in-law, so far as his self-acquisitions are concerned. This has been the gist of the rulings in Calcutta and Bombay. Some of the High Courts in India have begun to take a different and a more reasonable view of the position of the daughter-in-law as against the father-in-law, but it is a fact that the High Courts of Calcutta and Bombay have been maintaining the position that a father-in-law during his life-time is only under a moral responsibility to maintain his daughter-in-law ; he is not under a legal liability in regard to her maintenance during his life-time so far as his self-acquisitions are concerned. The Bombay cases have gone even further. In a very recent case the Bombay High Court allowed an alienation made by the father-in-law deliberately with the object of defeating the right of the widowed daughter-in-law for her maintenance. Now whatever the law on the question may be, it is a highly

immoral position that the father-in-law has been allowed by the decisions of the Courts to leave the daughter-in-law without any maintenance ; for, it is a fact very well known that in almost all the Hindu marriages it is the father of the boy who is responsible for the marriage of the son. Not only that he takes the initiative in the marriage, but it is his position in the society that induces the father of the girl to offer her in marriage to the son. Unless the son is grown up and established in life, it may be conceded as an almost universally acceptable proposition that it is the status and position of the father-in-law that influences the matrimonial alliance. Further, all the benefits in the form of gifts or other amenities of the nuptials substantially contribute to the benefit of the father-in-law. He is therefore estopped by his conduct from disputing his liability to provide for the daughter-in-law's maintenance. If there is no fund from which the provision could be made, in other words if the father-in-law should plead his inability for making such provision, that would be a different matter. But cases have gone up to the Courts in which the father-in-law has been allowed with impunity to make alienations out of sheer cussedness. It is therefore a matter where the sooner the legislature steps in the better. Recent decisions of the Courts have given a ray of hope to the helpless daughter-in-law ; e. g. the decision of the Privy Council which allows the widow in a Hindu joint family perfect latitude in the matter of adoption. Even here, there is no hope of escape or relief from the absolute character of the father-in-law's right to defeat the daughter-in-law's expectations for a provision for maintenance.

The last point which may be noticed in the case of the daughter-in-law is the vested interest which she

would have in the family property, and this would occur in two cases—under the Hindu Law in general and under the Statute, viz. the Act XVIII of 1937. Under the general Hindu Law, if the son happens to die after a suit for partition is instituted, or even before a suit is instituted, after he had made a unilateral declaration of his intention to separate, it has been held that such a declaration or the filing of the suit for partition effects a severance of his interest. Such severance gives rise to vested rights, and the vested right would descend to his widow after his death during the pendency of the litigation.

This will be under the general Hindu Law. Under the Statute law and also under what is known as the Hindu Women's rights to Property Act of 1937, a sort of a right of representation has been given to the widows of the family within certain degrees of relationship viz., the widowed daughter-in-law, grand-daughter-in-law and great-grand-daughter-in-law. Under this Statute, if a partition were to be effected to which the father and other members were parties, the widows of the deceased sons, i. e. the widowed daughter-in-law &c. have been given a position of equality for claiming a share equal to that which their husbands would have got had they been living at the date of such partition. It is in this respect that a slight amelioration in the condition of the daughter-in-law has been brought about by the Statute. In this respect, Viśwarûpa appears to have long anticipated the statutory provision which has been enacted now. It is elaborately detailed in the following paragraph :

> " If equal shares are allotted by the father, the widows of his sons and grand-sons and his own wives, to whom no Strîdhana has been given by their husbands or father-in-law or himself, should be made partakers of their husband's shares. "[1]

1 See " Viśwarûpa " Trivendrum Edn. p. 242, l. 9.
See also " Dâyakrama Saṅgraha " VI, par. 27, p. 432.

The Wife

Next to the daughter-in-law comes the wife. A wife's right to maintenance in the family has been already referred to. In the rights of women arising out of marriage, during coverture while the husband and wife are living together and carrying on a joint married life the question of the wife's right to maintenance does not arise at all. It is only when there is a discord in the married life and the smooth course of events is ruffled that this question would arise, and in such cases the wife has, as under certain circumstances already referred to in the Chapter on Marriage, the right to ask for maintenance and a separate maintenance at that. The right of maintenance includes the right of residence, food and clothing. The relative variation of the quantum of the amount is a matter of special appraisement in each individual case. What would be the barest trifle in one case would be a fair and decent allowance in another. Cases in practice have occurred where thousands of rupees per month, with allowances for conveyances and other amenities have been hotly questioned as insufficient provision, while the scantiest provision has been considered as a very decent allowance for the wife. In each case, it is a question of relative sufficiency or insufficiency.

When, however, the father makes a partition, the texts lay down that he should allot equal shares to the wives to whom no Strîdhana has been allotted, and the author of the Mitâkṣharâ adds that "where Strîdhana has been allotted" (quoting Yâjñavalkya himself), "half should be given".[1] The text of Yâjñavalkya has the plural number and thus it appears, if there are several wives, each should have an equal share. By reserving equal shares to the wives, a footing of equality to the wife at the time of partition is given.

1 See Yâjñavalkya II. 148. दत्ते त्वर्धं प्रकल्पयेत् ।

The position of the wife as such is further to be considered apart from partition—when she is superseded by the husband taking another woman as a wife, in which case the text of Yâjñavalkya lays down, as has already been stated before, that "if a husband marries another wife without just cause, then for the one who is superseded when she was perfectly obedient to him, was attentive to her household duties, had given birth to sons, and was always favourably disposed towards him, a penalty of a third of his property shall be inflicted " as a solatium for the superseded wife. Similar would be the right of the wives from other Varṇas, viz. in the case of inter-marriages.

The Mother

The next type of woman belonging to the family would be 'the mother.' The mother in the first place is entitled to be maintained by the son under all circumstances. While chastity is a condition precedent to the maintenance of a daughter-in-law or a wife, that condition does not find a place in the obligation for the maintenance of a mother. Chaste or unchaste, it is the duty of a son to maintain the mother, and she must be maintained. When there is ancestral property, there is no difficulty; but even if there is no ancestral property, it is a religious duty incumbent upon the son to maintain the mother. Apart from the right of maintenance, in the domain of partition also, the mother is entitled to a share equal to that of the brother; so that as has been laid down by Yâjñavalkya,[1] "when the brothers come to a partition after the death of the father, the mother also should be given a share equal to that of a brother". The right of the step-mother is on the same level with that of the mother under the same text of Yâjñavalkya. Her right of succession will be considered later on in its proper place.

1 पितुरूर्ध्वं विभजतां माताऽप्यंशसमं हरेत् ।

The Grand-Mother

Next to the mother comes the grand-mother. The right of the grand-mother to a share has been allowed by a number of writers and pre-eminently among them, by Vyâsa. Although the Yâjñavalkya Smṛti does not directly mention the grand-mother, nor does the Mitâkṣharâ in its commentary on the Smṛti make a mention of the grand-mother, still the commentators of the Mitâkṣharâ and other writers[1] noted below have sufficiently established the right of the grand-mother to a share in addition to her right of maintenance. For, as a widowed female member of the family, she has undoubtedly the right to be maintained out of the joint family funds.

And, when the grand-sons come to a partition, her right to a share has been demonstrated by the authorities mentioned above. There has, however, recently been a curious conflict of decisions on this point. In an early case in Allahabad,[2] it was held that the grand-mother was not entitled to a share under the Benares School of the Mitâkṣharâ law, but in two later decisions the same Court held that she was entitled to a share.[3] The Bombay High Court held in the case of *Vithal Ramkrishna v. Pralhad*[4] that in a partition between grand-sons, a step-grand-mother was entitled

1 The writers above referred to are :

Bâlambhaṭṭi p. 156 II. 4. तत्र जननीग्रहणमपुत्राणां मातृसपत्नीनां **पितामहीनां** चोपलक्षणम् । Also **अपरार्कः** — अत एव **व्यासः**

"असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्तिताः ।
पितामह्यश्च ताः सर्वा मातृतुल्याः प्रकीर्तिताः ॥
"तिस्रः पूज्याः पितुः पक्षे तिस्रो मातामहे तथा ।
इत्येता मातरः प्रोक्ताः पितुर्मातुस्वसाश्च मे" ॥ इति **चतुर्विंशतिमतम्.**

2 *Shivnarain v. Janki Prasad*, 34 All. 505.

3 *Kanhaiya Lal v. Ganesh*, 47 All. 127.
Balrama Kuvar v. Jagatnarain Singh, 50 All. 532.

4 39 Bom. 373.

to a share; but in a recent case the same Court held that in a partition between a father and his sons, the grand-mother is not entitled to a share.[1]

This is rather a curious conclusion; for in a case, where the partition was between an uncle and a nephew, the grand-mother was declared to be entitled to a share.[2] But, where in the place of the uncle and the nephew, it is the father and his son who come to a partition, the grand-mother under the Bombay ruling comes to occupy a less advantageous position. It is difficult to appreciate the *ratio* of such a distinction. From the grand-mother's point of view whether it is the uncle or the father and the nephew and the son who come to a partition, it is a proceeding, looked at from her point of view, between her son and a grand-son; and whether it is through one son or another son would not make any difference to her. The principle of a share to a woman of a joint family is based upon an assurance of her position when the family corporation comes to a disruption. It should be remembered that while the family is joint, the women of the joint family have no right whatsoever except that of maintenance and residence. They have not the active right of asking for a partition. It is only when the male members quarrel and there is a disruption of the family corporation, and when the position of the female members becomes insecure that the law makes provision for their maintenance being placed on a stable basis, and this provision takes the form of a share. It is therefore inconceivable how the grandmother should stand to lose a share when the son and the father come to a partition, while her share is perfectly undisturbed when the uncle and the nephew come to partition. The

1 See *Jamnabai v. Vasudeo*, 54 Bom. 417.

2 See 50 All. 532, referred to above.

instability of her position would follow, whoever may be the quarrelling and contending parties. This decision of the Bombay High Court cannot therefore be justified or find support in reason or authority.

It has been recently held that when the grandson and collaterals such as father's brother's sons and grandsons come to a partition she is not entitled to a share.[1]

Thus far have been examined the positions and the rights of women in a joint family in regard to the joint family property.

The last position that may be generally considered is when the woman, whether a daughter or a daughter-in-law, happens to be the sole surviving member of a joint family. In such a case, when it is the daughter of the family who happens to be the sole surviving member of the family, according to the law in Bombay she takes an absolute estate. According to the law in places other than Bombay her estate is limited by her life-time, with the incident of reversion attached to it. In other words, the extent of her estate is the same as that of a widow limited by her life time.

In the case of women belonging to a family by marriage, when they happen to be the sole surviving members, under the law in Bombay as elsewhere, they are supposed to succeed to what is known as a widow's estate—this has a peculiar significance in Hindu Law and will be further treated in the general chapter on the Woman's Estate. The main incident of such an estate which devolves upon such women by survivorship is that they can enjoy it for their life-time and have only such latitude in regard to alienation and other kinds of disposal of property as have been conceded in the case of a holder for life, but beyond that they have no further liberty of action.

1 *Jotiram v. Ramchandra*, 43 Bom. L. R. 843.

CHAPTER VI

The Law of Succession

The next point would be the women's position as heirs when the property devolves from a single member as the last surviving male holder of property: in other words, their position as heirs to an inheritance. Of the women who succeed as heirs to an inheritance, the women of the type of daughters of the family, whether it is the daughter of the propositus himself or of his father, in which case she becomes the sister of the propositus, or of his father's father, when she becomes the paternal aunt, or of his son, when she is the grand-daughter, and so on—, the women succeeding in their capacity as daughters of the family, take under the law of the Bombay Presidency an absolute and an individual estate; that is to say, as soon as an estate vests in a daughter, she becomes the fresh stock of descent. There is no reverter, as the estate is absolutely vested in her and there being no limitation attached to her estate, as in the case a life estate. At her death the persons to succeed to the property are those who are her heirs and not the heirs of her father, i. e. the last male holder.

So that in Bombay, where there are several daughters and they succeed simultaneously to their father, each one takes her share absolutely and upon the death of each the devolution of such share takes place by regard to the heirs individually of each daughter and not by a reversion of the estate to the daughters' father. If the daughter has a son, he succeeds as the son of his mother, and not as the grand-son of his maternal grand-father.

On the other hand, in the other presidencies, the estate which a daughter takes is limited with the incident of reversion of the estate to the father of the daughter. So that, if

there are several daughters who succeed and any one of them dies, the estate which had vested in the daughter during her life-time reverts back to the last male holder, and the succession to the estate is determined by the right of each claimant relatively to the last male holder, and not to the daughter. Reverting to the illustration given above while considering the Bombay case, if, for example, in Madras one of the daughter dies or all the daughters die, the estate reverts to the maternal grand-father, and the sons of the daughters who succeed take the estate not as the sons of their mothers, but as grand-sons of their maternal grand-father.

There is a further limitation in Bengal in regard to the daughter's right of succession. She must be capable of having a son.

This is the position of a daughter who is the issue of lawful matrimony. An **illegitimate** daughter has no recognition in Hindu Law, either as an heir or one entitled to a share on partition or for maintenance from the joint family.[1] Her position in regard to the property of her mother will be considered in the chapter on Strîdhana. She is not entitled even to maintenance among the higher classes.[2]

The Wife

As regards the wife as heir to a single man's estate, it appears that the wife's career as a recognised heir, has had a chequered course. In the earliest periods, she appears to have not had any recognition. In his comments on verses 135 & 136 of the Book II of Yâjñavalkya, Vijnâneśwara, the author of the Mitâkṣharâ, enters into a long and elaborate argument in favour of the wife.[3] In the course of this

1 *Parvati* v. *Ganapatrao*, 18 Bom. 177
2 *Velloyappa* v. *Natrajan*, 50 Mad. 340
3 Mitâkṣharâ Pp. 1066-1087 ; Colebrooke II-39.

argument he refers to the ancient texts and the texts of the period immediately preceding that of Yâjñavalkya, as also the texts of a later date and the expert scholar of the Mîmâṇsâ as he was and an avowed advocate of the woman's cause, he has established conclusively the right of the wife to succeed. The conclusion to which he has reached is put in the following words :—

> "Therefore, to one who has departed to heaven without any male issue, and who has not been re-united, the wife is the heir ; this has been established ".[1]

If there are several wives, they are entitled to the estate jointly, according to the strict letter of the Mitâkṣharâ under which every property that devolves[2] upon a woman "by a right of inheritance, purchase, partition, by donation, or by finding" becomes her Strîdhana, and Vijñâneśwara does not brook any distinction or varieties of Strîdhana, which by others have been classified as technical and non-technical etc. Therefore, according to the Mitâkṣharâ, the property which a wife takes would be her absolute property. What, however, has been so explicitly and clearly stated in the Mitâkṣharâ, has, by an irony of events, been taken away by the British Courts. The reason appears to be somewhat curious and of a fortuitous character. It appears that the part of India which happened to come first under the British rule was the Bengal Presidency where the doctrine of the Dâyabhâga, with its individualistic estate for each member of a family and with its further rule of devolution upon the widow being of a limited character prevailed. Under that doctrine, the rule of an absolute estate, although emphatically stated in the

1 तस्मादपुत्रस्य स्वर्यातस्य विभक्तस्यासंसृष्टिनः परिणीता स्त्री संयता सकलमेव धनं स्त्री गृह्णातीति स्थितम्। Mitâkṣharâ Tr: p. 1087. ll. 9–11.

2 रिक्थक्रयसंविभागपरिग्रहाधिगमप्राप्तम्।

Mitâkṣharâ has been summarily brushed aside and the same treatment was given to this passage of the Mitâkṣharâ in the Courts in Bengal and India; and in appeal, before the Privy Council in England their decisions were confirmed. The result has been that the Mitâkṣharâ rule of an absolute estate has been completely submerged by a curious transference of the Bengal rule to the other parts of India under the doctrine of *Stare decisis*. It will thus be seen that, but for this irony of combination, the estate which a wife takes as a widow after her husband's death would be of an absolute character without any limitations attached to it. The actual course of events, however, is quite different, as summarised above, and that is the law as it stands at present. Here is another point where the legislature may intervene and put right a course which has been historically proved to be wrong as above.

The Hindu Women's Rights to Property Act of 1937 does not appear to have touched this aspect of the women's rights. On the other hand, it definitely confirms the doctrine of a limited estate. Here is one more instance where the Hindu women and those working for them may with advantage claim the benefit of the opinion of a standard writer like Vijñâneśwara in their favour, and try to secure complete redemption for them. In fact, if those who are working in the interests of women's rights at present ask for a legislation on the lines laid by Vijñâneśwara and his School, it appears that not only what is asked for by the most sanguine apologists for women could be secured, but that they would stand to gain by asking to be placed in the position given to them in the Mitâkṣharâ.

However, as the estate which a wife takes, as stated above, under the law as it stands at present, is a limited estate, upon the death of the wife, or wives if there are

more than one, there will be a reversion to the estate of the husband. While in possession of the estate, the wife has certain powers of disposal to a limited extent, on the same lines as that of a manager and a little more expansive in latitude. For example, while in possession, she can spend the property for purposes which are recognised in law as necessary, she can also spend for religious and charitable purposes. Indirectly, she has a right of denuding herself of all the property by two processes which have been recognised as valid under the Hindu Law, viz. (1) Adoption, and (2) Surrender. The first of these, viz. adoption, has been already elaborated upon before, and the second, i. e. the surrender, will be detailed hereafter in connection with the chapter on the Women's Estate.

She has further the liberty, under the Mayûkha School, for the disposal of the movables. This right of disposing of the movables during her life-time was accorded to her by the decisions of the Bombay High Court, and it was held to extend both under the Mayûkha and the Mitâkṣharâ Schools. But by a decision of that High Court in 1909, a diversion has been effected. Under that decision it has been held that it is not open to the wife in possession to donate the moveables inherited from the husband.[1] This decision is an isolated instance on the record, and since no other case of a like nature has been on record, it appears that the decision may not have the chance of being followed in similar cases arising hereafter.

The wife's power over her husband's movables during her life-time has been recognised to that extent and no more, so that while she can perfectly make a valid gift during her life-time of movables belonging to the husband,

1 *Pandharinath v. Govind*, 32 B. 59. 9 B. L. R. 1905.

it is not open to her to dispose of such movables by a Will.[1]

The Mother

The position of the mother or the grand-mother succeeding to a son or a grand-son is practically the same as that of a wife, as they succeed in their right as widows of their husbands under the Bombay doctrine enunciated in the case of *Lalubhai v. Mancooverbai*[2].

The Daughter-in-law

The daughter-in-law, succeeding as an heir, stands on the same footing. Under the general law in India, elsewhere than in Bombay, it is only those women who have been enumerated in the cannon of Yâjñavalkya that have the right to succeed as heirs, and none others. The only exception to the general rule prevailing in India has been the doctrine prevailing in the Bombay Presidency which has been founded upon the interpretation of the term Gotraja in the rule of Yâjñavalkya referred to above.[3]

The case of the concubine or the *Avaruddhâ stree* will be considered in the final chapter.

Exclusion

Having thus dealt with the rights of women as heirs under the Hindu law to a single estate, it would be as well to take a summary view of their incapacity for succession. The rules of incapacity, stated by Yâjñavalkya at the end of the portion dealing with the law of joint family, i. e. the portion dealing with Partition, Maintenance, etc., are also the same when dealing with the right of succession to a single estate. Therefore, the causes of exclusion have been

1 See the case of *Damodar* v. *Paramanandas*, 7 Bom. 115, and *Gadadhar Bhat* v. *Chandrabhagabai*, 17 Bom. 690.

2 2 Bom. 388.

3 See Judgments of Westropp C. J. and West J. in *Lalubhai* v. *Mancooverbai*, 2 Bom. 388.

taken as evenly applicable to either kinds of devolutions, viz. as a member of a joint family or as an heir to a single man's estate. These causes, *mutatis mutandis*, would also be applicable in the case of women, as appears from the introduction to verse 140 of book II of Yâjñavalkya.[1]

> What has been said respecting succession of the son, is true in respect of the widow and other heirs as well as the re-united parents. The Author states an exception to that:—

From this it appears that the causes of exclusion which hold in the case of male members also hold in the case of the corresponding female members.

One point which should be particularly remembered in connection with these causes of exclusion is that these grounds operate to exclude only if the person, who is affected by these incapacities happened to incur the incapacity *before* the devolution of the estate; even then, if the incapacity is removed by medicaments and other restoratives, then the text says that their right for a share no doubt exists.[2]

The women, i. e. the wives and daughters of those who are suffering from an incapacity are not affected by that incapacity to the extent of their own individual rights undergoing any diminution or reduction. This has been made clear by Verses 141 and 142 which, in terms, refer to the daughters and wives of the incapacitated persons and lay down that if these are free from any incapacity they would be entitled to their respective shares of devolution, either upon a partition or inheritance.[3]

1 See *Gangu* v. *Chandrabhagabai*, 275-32 Bom. See Mitâkshará Colebrooke, II. X-I.

2 एतेषां विभागात्प्राक् विभागोत्तरकालेऽपि औषधादिना दोषनिर्हरणे भाग-प्राप्तिरस्त्येव.

3 See Colebrooke, II.—X-6. and 7.

CHAPTER VII

Strîdhana

This is one of the most important topics in regard to the rights of women under the Hindu Law *i. e.* their rights *to* property. Hitherto have been considered their rights arising *out of* property, but the subject of *Strîdhana* contemplates the consideration of the rights of women to hold property together with the orbit of its extent and intensity. The vicissitudes through which the rule as to the women's property right has passed under several stages of evolution of the law are an interesting study which has taxed the capacity of many a student of Ancient Law.

The lot of a woman has not been much of a satisfactory character among all the ancient nations. However, the most ancient evidence available in the Sanskṛit literature is in support of the existence of an equality of status of women with men. There are passages in the Vedas and the Upaniṣhads which clearly lead to this conclusion. The Pûrva Mîmâṇsâ also adds strength to the position of equality of women under Hindu Law. It is only during the development of the Sûtra literature, prominent among which is the Baudhâyana Sûtra which has started a departure from the ancient position. The basis, however, of the Text of Baudhâyana when examined, does not justify the conclusion drawn by him; for, with a play upon the word *Dâya* which in the original text expresses the Soma, Baudhâyana jumps to the conclusion that those who are not entitled to the Soma are powerless and therefore not entitled to property. This has been, however, carried by the Smṛti writers to such an extent that the women have been classed along with slaves as being incapable of holding property ;

but so also had been the sons[1]; while, however, the son has been having a clearly recognised status, at least in a joint family, along with his ancestors, the depreciation in the case of women remained without any palliation. It was only under the Text of Yâjñavalkya that scope was found by the author of the Mitâkṣharâ for restoring to the woman her ancient position.

Defined

The word Strîdhana has not been defined by any writer. All the Smṛtis give an enumeration of the several kinds of Strîdhana which contain heads which are common to all. It is only Vijñâneśwara the author of the Mitâkṣharâ who has, in a style which is entirely his own, given a definition of the word. He says,[2] "the property of woman is the 'women's property' and in elaboration he proceeds, "whatever thus has been acquired by a woman by any one or more of the modes of acquisition viz., by inheritance, purchase, partition, donation or finding, in whichever of these ways severally or distributively, which have been universally acknowledged to be the fundamental ones in all systems of jurisprudence, a property may have been acquired by a woman, that is 'woman's property'"; and he further says, that the literal meaning is so clear and obvious that the word is not in need of any technical interpretation or exposition, for he says,[3] 'when the literal meaning is clear, there is no scope for any technical interpretation'.

Kinds of Strîdhana

General:— None of the texts gives any exact definition of *strîdhana*. They enumerate and describe different kinds of *strîdhana* without aiming at any logical classification; nor is the number of

1 भार्या पुत्राश्च दासश्च त्रय एव अधनाः स्मृताः।
2 स्त्रिया धनं स्त्रीधनम्।
3 योगसम्भवे परिभाषाया अयुक्तत्वात्।

its kinds definitely settled. A rough idea of the several varieties may be obtained from the following texts :

"अध्यग्न्यध्यावाहनिकं दत्तं च प्रीतिकर्मणि ।
भर्तृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम्" ॥ मनुः ९. १९४.

" What was given before the nuptial fire (अध्यग्नि), what was given on the bridal procession (अध्यावाहनिक), what was given in token of love (प्रीतिदत्त), and what was received from a brother, a mother, or a father, are considered as the six-fold separate (kinds of) property of a married woman. "

To the same effect may be compared the following :—

" पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतम् ।
आधिवेदनिकं बन्धुदत्तं शुल्कान्वाधेयकमिति " ॥ विष्णुः

" अध्यग्न्यध्यावाहनिकं भर्तृदायस्तथैव च ।
भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम् " ॥ नारदः १३. ८.

Kâtyâyana mentions the same kinds as *Manu*. He has defined these as will be seen further on. *Yâjñavalkya* gives the same with a slight change, which has caused a difference of opinion among the several Schools. According to him.

" पितृमातृपतिभ्रातृदत्तमध्यभ्युपागतम् ।
आधिवेदनिकाद्यं च स्त्रीधनं परिकीर्तितम् " ॥ २. १४३.

" बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च " ॥ २. १४४.

" What was given (to a woman) by the father, the mother, the husband, or brother, or received by her before the nuptial fire (अध्यग्न्युपागतम्), or presented to her on her husband's marriage to another wife (आधिवेदनिक), and the rest (आद्यम्) is denominated *strîdhana*. As also that which is given by the kindred, as well as her fee, and anything bestowed after marriage ."

Passing from these to the secondary *Smṛtis*, *i. e.*, commentaries and digests, we have the *Mitâkṣharâ*, which in its commentary on *Yâjñ.* II. 143, after explaining the several words indicative of the several varieties of *strîdhana* says that that word is used, not in its *technical* but in its

etymological sense ; so that, according to it, property of any kind acquired by a woman is her *strîdhana*

आद्यशब्देन रिक्थक्रयसंविभागपरिग्रहाद्यिप्राप्तमेतत् स्त्रीधनं मन्वादिभिरुक्तम् ।
स्त्रीधनशब्दश्च यौगिको न परिभाषिकः । योगसम्भवे परिभाषाया अयुक्तत्वात्

"By the word *âdya*, property obtained by inheritance, purchase, partition, acceptance, finding-all this-is *strîdhana* according to *Manu* and the rest. The term *strîdhana* conforms in its import with its etymology, and is not technical; for, if the literal sense be admissible, a technical acceptation is improper."

Nîlakaṇṭha (the author of the *Vyawahâra-Mayûkha*) accepts the interpretation of *Vijñâneśwara*, but, in treating of succession he draws a distinction between *Pâribhâṣhika strîdhana* पारिभाषिकस्त्रीधनं, and what is acquired by the act of partition and the like. Thus he also assigns to the simple term *strîdhana* the same unlimited signification as the author of the *Mitâkṣharâ*.

"Considering the high authority of the *Mitâkṣharâ*, and the clear language in which it declares that property inherited by a woman does constitute her *strîdhana*, one cannot help feeling doubts as to the correctness of the decisions to the contrary. At the same time, considering their number and the fact that some of them are from the highest judicial authority, it would perhaps be too late to expect any departure from the rules laid down."

It has now been settled that property acquired by a woman by inheritance constitutes *strîdhana* in no case in **Bengal**, and becomes *strîdhana* in **Bombay** in all cases, except that of property inherited by a widow from her husband.[1]

1 *Sheo Shankar* vs. *Debi Sahai*, 30 I. A. 202 and cases cited.

Under the Benares School, as elsewhere, except in Bombay, property inherited by a female from a female does not become her *strîdhana* in such a sense that on her death it passes to her strîdhana female heirs to the exclusion of male heirs, (*ibid.*); there is no distinction as to the nature of the estate taken by her in this case from that taken by her from a female, so that, after her death, there is a revertor.[1]

From these texts the following kinds of *strîdhana* may be noted :

1. **Adhyagni**[2] अध्यग्नि : what is given to a woman at the time of marriage near the nuptial fire, is called *Adhyagni*. It usually consists of ornaments, clothes, money, etc.

2. **Adhyawâhanika**[3] अध्यावाहनिक : that which she receives while she is conducted from the parental abode to her husband's dwelling, and would include presents from the time of her marriage down to that of her maturity.

3. **Anwâdheyaka**[4] अन्वाधेयक : what is received by a woman from the family of her husband or parents after marriage. It extends to gifts from parents as well as those from a husband.

4. **Bhartṛ-Datta**[5] भर्तृदत्त : property given by the husband.

1 *Sheo Pertab* vs. *The Allahabad Bank*, 30 I. A. 209. *Sheo Shankar* vs. *Debi Sahai*, 30 I. A. 202.

2 विवाहकाले यत्स्त्रीभ्यो दीयते ह्यग्निसन्निधौ । तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्तितम् ॥

3 यत्पुनर्लभते नारी नीयमाना पितुर्गृहात् । अध्यावाहनिकं नाम स्त्रीधनं परिकीर्तितम् ॥

4 विवाहात्परतो यत्तु लब्धं भर्तृकुलात्स्त्रिया । भर्तुः पित्रोः सकाशाद्वा अन्वाधेयं तु तद्विदुः ॥

5 *Sitabai* vs. *Wasantrao*, 3 Bom. L. R. 201 ; *Dayaldas Laldas* vs. *Savitribai*, 34 Bom. 385.

5. **Śulka**[1] (शुल्क) This species has different indications in different schools—

(*a*) According to the *Mitâkṣharâ* — "Whatever is received by the kindred (बन्धुभिः) *i.e.*, the maternal and paternal kindred, in exchange of which the damsel is given. "—The bride-price.

(*b*) According to the *Dâyabhâga*—

(1) a special present to the bride to induce her to go cheerfully to the mansion of her lord IV.1. 6.

Or (2) even presents by strangers for the exercise of her influence with her husband or her family. IV. 3. 20.

(*c*) According to the *Vîramitrodaya* it is the value of household utensils and the like taken (by the parents) from the husband and the rest, in the shape of ornaments from the girl.

(*d*) According to *Kâtyâyana* (cited in *Mayûkha*), whatever is obtained as the equivalent of household utentils, of beasts of burden, of milch cattle, or ornaments, is declared (to be) *śulka*.

6. **Saudâyika**[2] (सौदायिक) : What is received by a married woman or by a maiden in the house of her husband or of her father from her husband, or from her parents, is termed *Saudâyika*.

A gift of property by a father to his daughter before her marriage is *Saudâyika*. It is at her absolute disposal[3].

1 गृहोपस्करवाह्यानां दोह्याभरणकर्मणाम् । मूल्यं लब्धं तु यत्किंचिच्छुल्कं तत्परिकीर्तितम् ॥

2 ऊढायाः कन्यकाया वा पत्युः पितृगृहेऽपि वा । भ्रातुः सकाशात्पित्रोर्वा लब्धं सौदायिकं स्मृतम् ॥

3 *Muthukaruppa Pillai* vs. *Sellathammal*, 39 Mad. 298.

It consists of affectionate gifts from kindred and includes both *Yautaka* and *Ayautaka* not received from strangers.[1]

It was left an open question in this case whether immovable property received from the husband could be included in this kind.

This term is not used in contradistinction to *Anvâdheya* in connection with succession to *strîdhana*.[2]

7. **Prîtidatta**[3] (प्रीतिदत्त): including *Pâdavandanika* (पादवन्दनिक) whatever is given through affection by her mother-in law or her father-in-law, and *Pâdavandanika* or what is received on her saluting the feet of elders, is termed *Prîtidatta*.

8. **Âdhivedanika** (आधिवेदनिक): Presents given to a senior wife on the occasion of the husband's marriage with another wife. *Yâjñavalkya* sets this down as equal to the expenses of the second marriage. When the superseded wife has got no *strîdhana*, she is to get a third of the husband's property, and half of it when she has got some *strîdhana*.

To this species of *strîdhana* her co-widow is not entitled in preference to the husband's brother or nephew.[4]

9. **Yautaka** (यौतक) (with its correspondent **Ayautaka** अयौतक): "According to the *Madana Pârijâta*, *Yautaka* is that which is obtained by a woman at the time of marriage or other (ceremony) whilst seated with her husband on one seat (विवाहादिसमये पत्या सहैकासने प्राप्तम् Vy. M.)

1 (*Ibid.*) *per* Seshagiri Ayyar, J.

2 *Sitabai* vs. *Wasantrao*, 3 Bom. L. R. 201.

3 प्रीत्या दत्तं तु यत्किंचिच्छ्वश्र्वा वा श्वशुरेण वा। पादवन्दनिकं चैव प्रीतिदत्तं तदुच्यते॥

4 *Hunsraj* vs. *Kesserbai*, 6 Bom. L. R. 17,

10. **Maiden's property** given to her by her affianced bridegroom or by her own family, or property which she had inherited from others than males.

11. **Savings** and property otherwise acquired by her form her *strîdhana*, and **purchases** made with it. So also property obtained by a compromise of her rights to *strîdhana* would be her *strîdhana*. Where property had been inherited by a widow from her husband and afterwards confiscated by Government, such property, on being subsequently granted to the widow by a sanad from Government, was held to rank as her *strîdhana*;[1] so would be property acquired by her by means of adverse possession;[2] unless it was acquired by her as a widow.[3] So also property acquired by a woman by her own exertions during coverture is her own property which she is entitled to hold independently of her husband, and it devolves on her heirs on her death.[4]

[Properties acquired jointly by husband and wife in a trade. Her share held to be her *strîdhana*.]

12. Wealth earned by a woman by the mechanical arts, (1) if earned during widowhood, or maidenhood, would be her *strîdhana* under all the Schools, (2) if earned during coverture would be her *strîdhana* only in the *Benares* and the *Mitâkṣharâ* Schools and nowhere else, (3) as also by the wives of herdsmen, vintners, dancers, washermen or hunters.[5]

1 *Brij Indar* Bahadur Sing vs. Ranee *Janki Koer*, 5 I. A. 1.

2 *Kanhai Ram* vs. Musammat *Amri*, 32 All. 189.

3 *Lajwanti* vs. *Safa Chand*, 51 I. A. 171 : 5 Lah. 192.

4 *Muthu Ramakrishna Naicker* vs. *Marimuthu Goundan*, 38 Mad. 1036.

5 See Yâjn. 11. 48. Also *Vyawahâra Mayûkka*, p. 157, ll. 21–24, V. IV. 20.

13. **Arrears of maintenance.**

Essentials of all these:—Excepting the case of maiden's property (No. 10 above), all these

(1) belong to a married woman,

(2) are given to her in her capacity of a bride or wife, and (3) except perhaps in the case of purely bridal gifts, they are given by her husband or by his or her relations.

Her rights over her stridhana:—Her property, taking it in its widest sense, falls under three heads :

(1) Property over which she has absolute control.

(2) „ „ „ her control is limited by the husband, but by him only.

(3) Property which she can only deal with, if at all, for limited purposes.

Her husband again has, under certain circumstances, a qualified right to use all her *strîdhana* of whatever description.

Thus it will be seen that in cases other than where she has absolute control over her *strîdhana*, the limitations upon her power will be determined

(1) by regard to her *status i e.* a maiden, a married woman during coverture, or a widow ; or

(2) by regard to the nature of the property under consideration.

Property over which she has absolute power. *Saudâyika.*

I. Before going into these cases, it may be remembered generally that *Saudâyika* of all sorts, whether moveable or immoveable, which has been given by her relations, with the exception of gifts from the husband, and *Saudâyika* of a moveable character which has been given by the husband are absolutely at her own disposal. She may spend, sell, devise or give it away at her own pleasure.[1]

1 *Damodar* vs. *Purmanandas*, 7 Bom. 155.

II. Restrictions depending upon the *status* of the woman, *i. e.*, (1) before the marriage, (2) during the continuance of marriage, and (3) after husband's death.

Before marriage.

(*a*) "During maidenhood excepting the disqualification by reason of nonage, a Hindu female labours under no other incapacity as regards her power over her *strîdhana* ; and except in the capacity of a guardian, her father and other relations have no control over it." *Bannerji.*

During Coverture.

(*b*) The husband can use the wife's *strîdhana* strictly so called (*i.e.*, her *Saudâyika strîdhana*, her ornaments and the like) without her consent, and as a matter of right in cases of distress only ; and in such cases repayment is optional with him if he is poor. If he uses it in any other case without her consent, he is guilty of a wrong, and is bound to restore it with interest ; and if he uses it with her consent, he is bound to make good the principal only, when he is able to do so. But even in this latter case he is compellable to restore her property, if he neglects her for the sake of another wife.

In this connection note the following texts :

वृत्तिराभरणं शुल्कं लाभं च स्त्रीधनं भवेत् । भोक्तुं तत्स्वयमेवेदं पतिर्नार्हत्यनापदि ॥ देवलः
(स्मृतिचन्द्रिकायां. व्य. कां. पृ. १८३ पं. १.)

दुर्भिक्षे धर्मकार्ये च व्याधौ संप्रतिरोधके । गृहीतं स्त्रीधनं भर्ता न स्त्रियै दातुमर्हति ॥
Yâjn : II, 147.

पुत्रार्तिहरणे वाऽपि स्त्रीधनं भोक्तुमर्हति । वृथादाने च भोगे च स्त्रियै दद्यात्सवृद्धिकम् ॥
Devala, Aparârka, p. 755.

The word 'take' does not mean 'physical taking,' but means 'taking and using'; hence any property taken by the husband and not used still remains as the property of the wife as the owner.[1]

In this connection the *Dos* of the Roman Law may bear a comparison and contrast.

1 *Nammalvar Chetty vs. Thangammal* 50 M. L. 941.

See also *Kâtyâyana* cited there and *Yâjñ.* II. 148.

Property acquired by the wife by gifts from strangers or by mechanical arts is always subject to her husband's dominion.[1] So that, if she dies before her husband, the property remains in his possession and passes to his heirs; but if he dies before her, she becomes the absolute owner of the property, and at her death it passes to her heirs, and not to those of her husband.[2] So in the case of property acquired by adverse possession by her.

This right to use the wife's *strîdhana* is personal in the husband, and though he can make use of it to procure his discharge from arrest under a Civil Court's decree his creditor cannot seize it.[3]

So also, though the husband may use it for removing the distress of any member, such member cannot use it. Nor can the husband bind the wife by his dealing with her property.[4]

After husband's death.

(*c*) During widowhood her rights are larger than during coverture. Her *kinsmen* have never any right over her *strîdhana* and after the only control that existed, *viz.*, that of the husband, is removed, her right becomes unlimited.

As regards her power of alienation :

(1) Moveable property given by the husband, which she is required to enjoy frugally during his lifetime, becomes absolutely alienable by her after his death. But

(2) immoveable property given or devised by the husband is never at her disposal even after his death, unless the gift or devise is coupled with an express power of alienation.[5] It is

1 प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः ।
भर्तुः स्वाम्यं भवेत्तत्र शेषं तु स्त्रीधनं स्मृतम् ॥ *Kâtyâyana.*

2 *Sham Shivendar Sahi* v. *Janki Koer*, 36 Cal. 311 : 36 I.A. 1.

3 1 Strange, 23, 24, 27, 28, cited Bannerjee.

4 *Mohima Chunder* vs. *Durga Monee*, 23 W. R. 184.

5 *Ram Narain Sing* vs. *Pearay Bhugut*, 9 Cal. 830.

her *strîdhana*, and it passes to her, not his heirs. But without such power, she appears to be under the same restrictions as those which apply to property inherited from a male even though the gift is made in terms which create a heritable estate.[1] "Property acquired by a widow by her skill and labour, or by gift from strangers, would become her *strîdhana* according to all the Schools." *Banerjee.*

III. **Restrictions depending on the nature of the property** :—Her power over property acquired by gift, devise, art or purchase, has already been determined.

As to property acquired by inheritance :

(1) In **Bengal**, it can never be *strîdhana*, whether inherited from a male or a female. On her death it passes to the next heir of the male or female who originally held it and not to her heirs.[2]

(2) In **Madras**, the same rules have been laid down.[3] To the same effect are other Schools, branches of the *Mitâkṣharâ*.[4] Even a maiden daughter succeeding to the *strîdhana* property of her mother was no exception, so that she took only a limited estate.

(3) In **Bombay**, a woman is on a much better footing as regards property inherited by her. She has been held to possess absolute power of alienation over movable property inherited from her husband[5]; and over all property, both moveable and immoveable, inherited from her father

1 *Kotarbasapa* vs. *Chanevorava*, 10 Bom. H. C. 408.

2 *Huri Doyal Singh* vs. *Grish Chunder*, 17 Cal. 911, 919.

3 *Venkata Ramkrishna Rao* vs. *Bhujanga Rao*, 19 Mad. 107; *Virasangappa Shetti* vs. *Rudrappa Shetti*, 19 Mad. 110.

4 *Janakisetty Sooryudu* vs. *Miriyala Hanumayya*, 32 Mad. 521.

5 *Bechar Bhagvan* vs. *Bai Lakshmi*, 1 Bom. H. C. R. 56; *Pranjivandas* vs. *Devakuvarbai*, 1 Bom. H. C. R. 130.

or her brother.[1] Her power of alienating moveables inherited from her husband is limited to alienations during her lifetime, and does not extend to testamentary dispositions of it so as to displace the right of inheritance of her husband's heirs.[2]

Wife living separately :—A wife, however, who has lived separately from her husband for 30 or 40 years is competent to make a will of property inherited by her from her father, even without the consent of the husband.[3]

Females, inheriting in their family of birth, *e. g.*, daughter and sister, take absolutely, while those inheriting in the family of marriage, *e. g.*, widow, daughter-in-law,—take a limited interest.[4] But a widow, inheriting to a daughter of the family takes an absolute estate.[5]

N. B.—(1) *Strîdhana* promised by the husband may be claimed by her from his heirs like a debt. भर्त्रा प्रतिश्रुतं देय-मृणवत्स्त्रीधनं सुतैः (*Devala*).

(2) *Unchastity,* according to the texts, works a forfeiture of a woman's right for acquiring or retaining *strî-dhana.* But the rule has never been enforced by courts. In an old case an adulteress was declared entitled to her parent's gift of jewels.[6] It has been held that unchastity

1 *Venayak* vs. *Luxmeebaee*, 9 M. I. A. 520

2 *Gadadhar Bhat* vs. *Chandrabhagabai*, 17 Bom. 690 (F. B.) followed in *Chaman Lal* vs. *Ganesh*, 28 Bom. 453.

3 *Bhagvanlal* vs. *Bai Divali*, 27 Bom. L. R. 633.

4 *Bhagirthibai* vs. *Kahnujirav*, 11 Bom. 285; *Gadadhar Bhat* vs. *Chandrabhagabai*, 17 Bom. 690 (F. B.); *Tuljaram* vs. *Mathuradas*, 5 Bom. 662 ; *Rindabai* vs. *Anacharya*, 15 Bom. 206 ; *Vrijbhukandas* vs. *Bai Paravati*, 32 Bom. 26 : 9 Bom. L. R. 1187 ; *Dhondi* vs. *Radhabai*, 36 Bom. 546 : 14 Bom. L. R. 569.

5 See *Gandhi Maganlal* vs. *Bai Jadabgab*, 24 Bom. 192 F. B.) ; *Narayan*, vs. *Waman*, 23 Bom. L. R. 587.

6 *See* MacNaghten's Precedents, Ch. VII Ca. 7 ; *Musammat anga Jati* vs. *Ghasita*, 1 All. 46 (F. B.).

in a woman does not incapacitate her from inheriting, or keeping possession by right of *strîdhana*.[1] A female disqualified for inheriting the property of a male, is not incapable of holding *strîdhana*[2].

C.—Succession to Strîdhana.

From what has gone before it will be seen that the word *strîdhana* has been variously interpreted in different Schools, and even under the *Mitâkṣharâ* School, with the general acceptance of its denotation, there are variations in the connotation of the term. It will be convenient to refer to the several Schools and give the orders of succession separately.

A. According to the **Mitâkṣharâ** :

अतीतायामप्रजायां बान्धवास्तद्वाप्नुयुः ॥ अप्रजःस्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्ष्वपि । दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत् ॥ *Yâjn.* II, 144-145.

From *Vijñâneśwara's* commentary upon this text the following order of succession may be deduced :

1. Daughters, unmarried (अनूढाः)
2. ,, married, unendowed (अप्रतिष्ठिताः)
3. ,, ,, endowed (प्रतिष्ठिताः)
4. Daughter's daughter.[3] The rule regarding preference over the unmarried over the married does not apply in the case of a daughter's daughter.[4]
5. Daughter's son.
6. Son.
7. Grandson.

1 *Angammal* vs. *Venkata Reddy*, 26 Mad. 509.
2 *Vallabhram* vs. *Bai Hariganga*, 4 Bom. H. C. R. A. C. 135.
3 *Javitri* vs. *Gendan Singh*, 49 All. 779.
4 *Ram Kali* vs. *Gopal Dei*, 48 All. 648.

8. The unmarried daughter of a rival wife of a superior class.[1]

9. (A) In default of all these, if the marriage was in an approved form, the property passes, according to *Vijñâneśwara*, to the husband. In his absence, a co-widow will succeed in preference to the husband's brother or brother's son.[2]

According to *Kamalâkara*, the author of *Nirṇaya-sindhu*, in default of the husband, the daughter, son and daughter's son of the rival wife; and in their default the mother-in-law, the father-in-law, the husband's brother, his sons and other next of kin of the husband succeed.[3] The husband is entitled to preference over a step-son.[4]

9. (B) If the marriage was in an unapproved form, it passes to her parents, the mother taking before the father.[5]

N. B.—The *Chadar Andazi* is an unapproved form of marriage.

Among several step-sons, those by adoption take equally with those born.[6]

Usage :—According to a special custom among the Kudwa Kunbis of Ahmedabad, property inherited by a married but childless woman from her father passes on her death to her father's relatives in preference to her husband or his relatives.[7]

1 *Nanja Pillai* vs. *Sivabagyalhachi*, 36 Mad. 116.

2 *Bai Kesserbai* vs. *Hunsaraj Morarji*, 33 I. A. 176.

3 See *Ganesh Lal* vs. *Ajudhia Prasad*, 3 All. L. J. 85; *Krishna* vs. *Shripati*, 30 Bom. 333: 8 Bom. L. R. 12; *Kanakammal* vs. *Anathamathi Ammal*, 37 Mad. 293.

4 *Bhimacharya* vs. *Ramacharya*, 33 Bom. 452; *Ganpat Rama* vs. *Secretary of State for India*, 45 Bom. 1106; *Moti Chand* vs. *Kunwar Kalika Nand Singh*, 48 All. 663.

5 *Gurdial Singh* vs. *Mst. Bhagwan Devi*, 8 Lah. 366.

6 *Gangadhar Bogla* vs. *Hira Lal Bogla*, 43 Cal. 944.

7 *Ratilal* vs. *Motilal*, 27 Bom. L. R. 880.

N. B.—Daughters succeeding to the non-technical *strîdhana* take absolutely and severally, and not a joint interest.[1] So it has been held that a widow inheriting to a daughter of the family takes absolutely.[2] The rule in Bengal is defferent. There inherited *strîdhana* only confers a life-estate.[3]

N. B.—It is the *quality* and not the form of a marriage that decides the course of descent.[4]

By her degradation a Hindu woman does not cease to be a Hindu and the rule of succession to her property is the ordinary rule of Hindu Law. Where a wife left her husband and became a prostitute and died as such, it was held that her husband might still be heir to her property. Prostitution does not sever the legal relation and the degradation of the woman in consequence does not entail a cessation of the tie of kindred between her and her husband's family.[5] Prostitution degrades a woman and severs the connection between her and the undegraded members, but that does not operate to sever her from her sons or her chaste daughters born after her degradation. Such sons and daughters take equally. In the absence of heirs in the husband's family a brother's son takes.[6]

Illegitimacy or degradation cannot be treated as a ground of preference in the matter of succession to a degraded person's estate.[7] Therefore on a competition between a legitimate son,

1 *Bai Rukhmani* vs. *Keshavlal*, 9 Bom. L. R. 1293.

2 *Narayan* vs. *Waman*, 23 Bom. L. R. 587.

3 *Jogendra Chandra Banerjee* vs. *Phani Bhushan Mookerjee*, 43 Cal. 64.

4 *Moosa Haji* vs. *Haji Abdul*, 7 Bom. L. R. 447.

5 *Narain Das* vs. *Tirlok Tiwari*, 29 All. 4; see also *Subbaraya Pillai* vs. *Ramasami Pillai*, 23 Mad. 171; *Narumayya Chetti* vs. *Tiruvengadathan Chetti*, 24 M. L. J. 223; *Minakshi* vs. *Muniandi*, 38 Mad. 1144: 27 M. L. J. 353; *Tripura Charan Banerjee* vs. *Harimati Dassi*, 38 Cal. 493.

6 *Hiralal Singha* vs. *Tripura Charan Ray*, 40 Cal. 650; *see also* observations in *Bai Kesserbai* vs. *Hansraj Morarji*, 33 I. A. 176 at p. 196.

7 *Narumayya Chetti* vs. *Tiruvengadathan Chetty*, 24 M. L. J. 223.

and an illegitimate daughter, the son took in priority over the daughter. The husband will have priority over an illegitimate son.[1] Among śûdras the illegitimate daughter succeeds as heir in default of any heir.[2]

B. According to the **Mayûkha** :

He divides *strîdhana* into technical and non-technical for the purposes of succession. In the technical he includes (A) *Anvâdheya*, *Prîtidatta*, *Yautaka* and other *strîdhana*, (B) *Bandhudatta*, and (C) *S'ulka*.

A. (*a*) To *Anvâdheya* and *Prîtidatta* of the husband, the heirs are :

(*i*) Son and unmarried daughters equally (with little presents to daughter's daughter).

Ornaments given to her after marriage by the husband or her kindred go under the *Mayûkha* to sons and daughters equally.[3]

or (*ii*) Son and married daughters equally (with little presents to daughter's daughter).[4]

(*b*) *Yautaka* goes to unmarried daughters.

(*c*) To other technical *strîdhana* not specially provided for, the heirs are the same as under the *Mitâkṣharâ* with very slight difference (noted below in italics).

1. Destitute unmarried daughters.
2. Other ,, ,,
3. Indigent married daughters (with the *daughters of a Brâhmaṇî co-wife*).
4. Other married daughters.

1 *Jagannath* vs. *Narayan*, 34 Bom. 553 : 12 Bom. L. R. 545.

2 *Dundappa* vs. *Bhimawa*, 45 Bom. 557 : 22 Bom. L. R. 1306.

3 *Ashabai* vs. *Haji Tayeb*, 9 Bom. 115.

4 *Sitabai* vs. *Wasantarao*, 3 Bom. L. R. 201 ; *Dayaldas* vs. *Savitri Bai*, 34 Bom. 385.

5. *Daughter's issue* (male and female take together taking *per stirpes* by their mother, not *per capita*).
6. Male issue (sons, grandsons and great-grandsons).
7. (*a*) Husband (when the marriage was in an approved form).
   (*b*) Father (when the marriage was in an unapproved form).
8. Husband's or father's next of kins as the case may be.
9. Ultimate heirs (noted later on under the text of *Bṛhaspati*).

B. *Bandhu-Datta*, in case of a marriage being in a unapproved form.

1. Bandhus, and in their absence.
2. Sons.

C. *Śulka* (see special rules below).

In the case of non-technical *strîdhana* :

(1) *Male issue* (*i. e.*, sons, grandsons, great-grandsons in order, so that a son takes before the son's son and so on.[1])

A step-son is not entitled to succeed. It is the issue of the woman who has *strîdhana*, that is contemplated.[2]

(2) *Daughters.*—The rule as to spiritual benefit does not hold under the Mithila School. Accordingly a widowed daughter has the right of inheritance.[3]

1 *Bai Raman* vs. *Jagjivandas*, 41 Bom. 618 : 19 Bom. L. R. 629 ; *Dowlatram* vs. *Naraindas*, 60 Ind. Cas. 929 (Sind). *See* Telang, J., in *Manilal* vs. *Babi Rewa*, 17 Bom. 758, and other cases discussed.

2 *Lalsing Mulsing* vs. *Girdharidas*, 60 Ind. Cas. 263.

3 *Rajrani Debya* vs. *Gomati Debya*, 7 Pat. 820.

(3) *Daughter's issue.*
(4) Same as for technical *strîdhana.*

(C) According to the **Smrti-Chandrikâ** the course of succession is in many important respects similar to that under the *Mayûkha* on the subject, except that it does not distinguish between technical and non-technical *strîdhana.*

1. Like the *Mayûkha*, it allows sons and unmarried daughters to succeed simultaneously to the *Anvâdheya*, *Prîtidatta* and affectionate gifts by the husband. But widowed daughters do not take with sons.
2. To the *Yautaka* again like the *Mayûkha*, maiden daughters alone succeed, then the sons; the line of succession further is not laid down.
3. In other respects its rules are the same as those under the *Mitâkṣharâ.*

(D) According to **Jimutavâhana**, the author of the **Dâyabhâga**, the *strîdhana* property is divided, for the purpose of succession, into (1) maiden's property, (2) *Ayautaka*, (3) *Yautaka*, and (4) *Prîtidatta.*

1. As to maiden's property, *see* special rules under *S'ulka.*
2. To the *Ayautaka*:
   (1) Sons and unmarried daughters simultaneously.
   (2) Married daughters who have or are likely to have male issue.[1] Married daughters are postponed to sons.[2]

1 *Basanta Kumari* vs. *Kamikshya Kumari*, 33 Cal. 23.
2 *Delanney* vs. *Pran Hari*, 22 Cal. W. N. 990.

The word *Kanyâ* in the *Dâyabhâga* (IV, II, 16) means an unmarried daughter and a son has preference over a married daughter to the *Prîtidatta Ayautaka strîdhana* of the mother.[1]

(3) Son's son.
(4) Daughter's son.
(5) Great-grandson.
(6) Step-son.
(7) His son.
(8) His grandson.
(9) Widowed and sonless daughter.

[*N. B.*—A younger brother of the husband has preference over her step-brother.][2]

(10) Brother.
(11) Mother.
(12) Father.
(13) Husband.

3. To the *Yautaka*.

(1) Unmarried daughter, (2) betrothed daughter, (3) married daughter, (4) widowed daughter, (5) son, (6) daughter's sons, (7) son's son, (8) son's grandson, (9-11) step-son, his son and grandson;

Property acquired by a woman by her own wits is her *strîdhana* and descends to daughters in preference to sons.[3]

When the marriage is in an approved form.	When it is in an unapproved form.
(12) Husband.	(12) Mother.
(13) Brother.	(13) Father.
(14) Mother.	(14) Brother.
(15) Father.	(15) Husband.

1 *Prosonno Kumar Bose* vs. *Sarat Shoshi Ghosh*, 36 Cal. 86.

2 *Debiprasanna Roy Chowdhry* vs. *Harendra Nath Ghose*, 37 Cal. 863.

3 *Mahendra Nath Maity* vs. *Girish Chandra Maity*, 19 Cal. W. N. 1287.

4 To the *strîdhana* given by parents, the unmarried daughter alone inherits.

In her absence the general rule as to *strîdhana* prevails.

A sister and sister's sons have preference over a father's brother's son.[1]

Under the *Dâyabhâga* law a step-sister's son has preference to a widow's *strîdhana* over a husband's elder brother,[2] or over the daughter's son of the great-grandson of the great-great-grandfather of her husband[3].

In the absence of the heirs specified, the "nearest kinsmen" who take are the nearest in blood whether cognate or agnate.[3]

A *maurasi* and *mokarari* lease of property granted by a father to the daughter after her marriage reserving merely the right to receive a nominal amount as rent was held to be her *Anvâdheya strîdhana* to which the mother was given preference over the husband.[4]

N. B.—From this enumeration of heirs under the different Schools it will be found that the line of the *Mitâkṣharâ* has been followed almost everywhere with slight variations here and there

And generally when the *strîdhana* property of a woman devolves on her sons, who with their father, form an undivided Hindu family at the time of the mother's death, the sons take it as co-owners or tenants-in-common without the benefit of survivorship. The *strîdhana* property of a woman (with a single exception) primarily descends upon her daughters, and in default of a daughter on the daughter's offspring, females having precedence over the male offspring. It is only in default of the daughter's line that sons succeed to their mother's *strîdhana*. In

1 *Dwarka Nath* vs. *Sarat Chandra Singh* 39 Cal. 319.

2 *Dasharathi Kundu* vs. *Bipin Behari Kundu*, 32 Cal. 261.

3 *Shashi Bhushan Lahiri* vs. *Rajendra Nath Joardar*, 40 Cal. 82.

4 *Ram Gopal Bhuttacharjee* vs. *Narain Chandra Bandopadhya*, 33 Cal. 315.

the *Mitâkṣhrâ* no distinction is made between "obstructed" and "unobstructed" heritage in respect of the devolution of *strîdhana* property. The definitions of "obstructed" and "unobstructed" heritage given therein refer in terms only to the property of a male. In the Hindu law the word "ancestor" is not used in the wide sense in which it is used in English law as merely equivalent to the "propositus" and as correlative of "heir". In the Hindu law it is used only as signifying a direct ascendant in the paternal or maternal line, and more technically, as signifying the paternal grandfather and his ascendants in the male line. Where on the death of a maternal uncle his estate devolves by inheritance on his sister's sons, who at the time are undivided members of a Hindu family governed by the Mitâkṣharâ law, they take it as co-owners or tenants-in-common without benefit of survivorship. [1]

Ultimate heirs:—Failing all these heirs severally enumerated, *Bṛhaspati* lays down a rule which equally applies to all the Schools, and which supplements the list of primary and secondary heirs. His rule is as follows :

मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा ।
श्वश्रूः पूर्वजपत्नी च मातृतुल्याः प्रकीर्तिताः ॥
यदासां औरसो न स्यात्सुतो दौहित्र एव वा ।
तत्सुतो वा धनं तासां स्वस्त्रीयाद्याः समाप्नुयुः ॥ XXV, 88-89 [2]

"To a male the females related as the sister of his mother, the wife of his maternal or of his paternal uncle, the sister of his father, the mother of his wife, and the wife of his elder brother are like his mother: and so to a female the males related in the reciprocal way, as her sister's son, her husband's sister's son, her husband's brother's son, her brother's son, her daughter's husband, and her husband's younger brother, are like her sons. And these last mentioned relations of a female being like her sons inherit her *strîdhana*, if she leave no male issue nor son of a daughter,

1 *Karuppai Nachiar* vs. *Sankaranarayan Chetty*, 27 Mad. 300.

2 *See* Mayûkha. p. 72. ll. 17-18. *Smritichandrikâ* quotes a similar text in the आह्निके पृ. ३४ पं. १२.
मातृष्वसा मातुलानी श्वश्रू धात्री पितृष्वसा । पितामही पितृव्यस्त्री गुरुस्त्री मातृवच्चरेत् ॥

nor a daughter."[1] Thus the ultimate heirs would be (1) sister's son, (2) husband's sister's son, (3) husband's brother's son, (4) brother's son, (5) daughter's husband, and (6) husband's younger brother.

The order of succession :—The next question that would arise is in what order these persons enumerated in the text of *Bṛhaspati* would take ? Chandavarkar, J., after an examination of the text and the context in which it has been quoted by *Nîlakaṇṭha*, has held that the question of priority among the heirs enumerated here must be determined with reference to the rule of propinquity. According to that rule, as between the younger brother of the husband, of a deceased woman and the son of a brother of her husband. the former has a preferential right to inherit her technical *strîdhana*[2]

Their Lordships (Lord Davey) were of opinion that the text of *Bṛhaspati* should be read distributively as regards the property of women married according to one of the approved forms, and of those married in one of the lower forms. In the one case, those of the heirs enumerated by *Bṛhaspati* who are blood relations of the husband, *viz.* the husband's sister's son, the husband's brother's son, and the husband's brother, will succeed; and in the other case the relations of the father will succeed. As regards the order of their succeesion "their Lordships think the better opinion is that the order of succession is not indicated. There is no apparent reason for preferring the husband's sister's son to the husband's brother's son, or both to the husband's brother. And their Lordships agree with the learned editor of the *Vyawasthâ Chandrikâ* that the solution is to be found by reference to pl. 28 in which the heirs are described as the nearest sapiṇḍas of the wife in the husband's family, or the nearest to her in her father's family as the case may be."[3]

N. B.—The solution will be found in *Mitâkṣharâ* on Yâjñ. II. 145. English Tr. p. 274 and 275 and 11. 8-10 (Ch. II. XI. 11). Moreover, the son-in-law appears to have been left undisposed of by this solution.

1 Bannerji's *Strîdhana*, pp. 387, 383 *per* Subramanya Ayyar J., in *Venkatasubramaniam Chetti* vs. *Thayarammah*, 21 Mad. 263.

2 *Hansraj* vs. *Bai Mogibai*, 7 Bom. L. R. 622, 631.

3 *Bai Kesserbai* vs. *Hnsraj* 33 I. A. 176.

Further "the list is not exhaustive, and neither a co-widow nor any other sapiṇḍa of the husband is excluded. The words 'and the rest' must therefore mean, or include the other relations of the husband or father." (33 I. A. at p. 197.) The Madras High Court has held that this text has no application to questions relating to the right of succession to a maiden's property.[1]

Special rules.

(1) **Succession to a maiden's property** :—"Of an unmarried woman deceased, (1) the uterine brothers shall take the inheritance, then (2) the mother, (3) the father, and (4) his nearest relatives."[2] The result is that her property is kept in her own family. In fact she has no other family than the one to which she belongs by birth. Her *sapiṇḍas* are the *sapiṇḍas* of the parents, *i. e.* of the father as those are also of the mother (marriage being ordinarily presumed to be in an approved form).[3]

Cases.

The relative superiority of the different claimants will be determined by regard to the rules of succession of the *sapiṇḍas e. g.*, while in *Bombay* a father's sister will have priority over his male Gotraja Sapiṇḍas (*see* 36 Bom. 339), she may not have such a position in Madras (43 Mad. 32) where father's paternal uncle's son was allowed priority over his sister. In 38 Mad. 45 her step-mother was allowed priority over her mother's sister. So in 39 Cal. 219 her sister and the sister's son were given preference over the father's brother's son.

1 *Sundaram Pillai* vs. *Ramasamia Pillai*, 43 Mad. 32 at 36.

2 "रिक्थं मृतायाः कन्याया गृह्णीयुः सोदरास्तदभावे मातुस्तदभावे पितुः" बौधायनः (परिशिष्ट ७) मिताक्षरायां पृ. १०२ पं. १७–१८.

3 See *Janglubai* vs. *Jetha Appaji*, 32 Bom. 409; *Tukaram* vs. *Narayan Ramachandra*, 36 Bom. 339: 14 Bom. L. R. 89 (F. B.); *Dwarka Nath Roy* vs. *Sarat Chandra Singh Roy*, 39 Cal. 319; *Kamala* vs. *Bhagirathi*, 38 Mad. 45; *Sundaram Pillai* vs. *Ramasamia Pillai*, 43 Mad. 32.

All presents which may have been received from the bridegroom are to be returned after deducting the expenses already incurred on both sides.

(2) **Śulka** (शुल्क): This word has already been explained above.

Of a married woman

The rule is भगिनीशुल्कं सौदर्याणामूर्ध्वं मातुः **Dr. Bühler** interprets this as follows: "the sister's fee belongs to her uterine brothers if her mother be dead." According to the **Dâyabhâga** the uterine brothers would come first, and then the mother and the father. **Bâlambhatta** says, however, that the word mother in this rule refers to the woman who received the *Śulka* and not her mother, and so Dr. Mayer, translates the text thus: "after the death of the mother her fee passes to her uterine brothers." Some think that it belongs to them even during her lifetime. The **Benares School** treats *Śulka* as an exception to the general rule that a woman's property goes to her daughters, and makes it pass at once to her brothers, and in default of them to the mother. This is the view of the **Mitâkshara**. According to the **Mayûkha** the order is *uterine* brother, mother, and father.

(३) जनन्यां संस्थितायां तु समं सर्वे सहोदराः।
भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः॥ Manu IX. 192.

"On the death of the mother, all the uterine brothers as well as all the uterine sisters equally divide the maternal wealth." This rule refers necessarily to property other than *Yautaka*. *Vijñâneśwara*, however, recognizing only one line of descent to *srîdhana* except *Śulka*, explains this text, not as meaning that brothers and sisters take together, but that the sisters take first, and the brothers afterwards, each class sharing equally *inter se*. *Nîlakaṇṭha* does not approve of this

interpretation, and lays down that unmarried daughters and sons inherit simultaneously. The *Smṛtichandrikâ*, *Viramitrodaya*, *Vîvâda-Chintâmaṇi* and *Varadarâja* all agree with the *Mayûkha* in the interpretation, and take this text literally as prescribing a different course of descent for the two sorts of *strîdhana* there specified, *viz.*—

(1) Gifts subsequent to marriage received either from the woman's own family or the family of her husband, and

(2) Gifts received from her husband.

These are shared simultaneously and equally by the woman's sons and daughters (being) unmarried. The married daughters and the grand-daughters only receive a trifle as a mark of respect, and widows are wholly excluded. But if there are no unmarried daughters, married daughters whose husbands are living are also allowed by *Kâtyâyana* to share with their brothers. According to the *Mayûkha* property received by a married woman from a stranger and her own earnings pass to her sons, etc., first, and then to her daughters.[1]

Succession of daughters:—Comparative poverty is the only criterion for settling the claims of daughters.[2] In Madras, where several daughters succeed jointly they take a joint estate, and upon the death of one of them, others take by survivorship. [3]

In Bombay it has been held that though the courts ought not to go minutely into the question of comparative poverty, yet where the difference in wealth is marked, the whole property passes to the poorest daughter. [4]

1 *Manilal* vs. *Bai Rewa*, 17 Bom. 758.
2 *Audh Kumari* vs. *Chandra Dai*, 2 All. 561.
3 *Sengamalathammal* vs. *Velayudha*, 3 Mad. H. C. 312.
4 *Totawa* vs. *Basawa*, 23 Bom. 229.

CHAPTER VIII

Woman's Estate Generally

After having stated the kinds of *Strîdhana* and the rules of succession regarding the same, a short statement regarding the Woman's Estate generally will serve as a useful conclusion to this subject.

General : the property which a female takes may be of two descriptions : (1) that special sort of estate over which she has absolute control, even during her husband's lifetime ; and (2) all sorts of property of which a woman has become owner, whatever the extent of her right.

Property held by a woman may also be looked at from two points of view, *viz.*, whether it was (1) inherited from a male owner, or (2) taken in any other way.

General nature of strîdhana :—In speaking of *strîdhana* technically so called, the first kind, *i. e.*, the one inherited from a male is excluded. According to the strict letter of Hindu law, absolute estate is the rule and restriction is the exception. This is the general rule in Western India, and an exception to this rule is the case of a widow of a Gotraja Sapiṇḍa inheriting in the family of her husband. The decisions show a drift somewhat opposed to this ; but see the case of *Gandhi Maganlal* vs. *Bai Jadab.*[1]

Females taking or holding property may be grouped in two classes :

(1) Those who enter the family by marriage, *e. g.*, a widow, a mother, grandmother, etc., and

1 24 Bom. 192 (F. B.) at pages 214 and 217.

(2) Those who are born in the family, but leave it by marriage, *e. g.*, a daughter, sister, etc., *i. e.*, *gotrajas* by birth but *bhinnagotras* by marriage.

The first class may be designated as "the daughters-in-law" (कुलवधू) of the family, while the second class, "the daughters" of the family (कुलकन्या).

Females falling under the *first* of the above classes always take a limited estate when they take as such heirs[1]; while those falling under the second group take an absolute estate in the Bombay Presidency. In other parts of India they take a limited estate;[2] similarly as to Jains.[3]

Nature of the estate taken

(1) **Widow's estate** :—Not an *estate for life* (as that expression is used in English law) but rather an estate of inheritance to herself and to the heirs of her husband.[4] Hindu law knows nothing of estates for life, or in tail, or in fee. It measures estates not by duration, but by use. Its distinctive feature is that at her death it reverts to the heirs of the last male holder. She never becomes a fresh stock of descent.[5] She cannot make a will of property inherited from her husband.[6] Several widows succeeding take jointly with the incident of survivorship. They may, for the

1 *Dhondi* vs. *Radhabai*, 36 Bom. 546; 14 Bom. L. R. 569:

2 *Karim-ud-din* vs. *Govind Krishna Narain*, 36 I. A. 138:

3 *Bhikhabai* vs. *Manilal*, 54 Bom. 780: 32 Bom. L. R. 1217.

4 *Moniram* vs. *Keri Kolitani*, 7 I. A. 115: 5 Cal. 776.

5 *Collector of Masulipatam* vs. *Cavaly Vencata*, 8 M. I. A. 500; *Keri Kolitani* vs. *Moniram*, 13 Beng. L. R. 1; *Lallubhai* vs. *Mankuvarbai*, 2 Bom. 388. See also *Janaki Ammal* vs. *Narayanswami Aiyer*, 18 Bom. L. R. 856 (P. C.).

6 *Jagdeo Singh* vs. *Mussammat Raja Kuar*, 6 Pat. 788; *Sarat Chandra Mitra* vs. *Charusila Dasi*, 55 Cal. 918.

sake of convenience, partition the estate and enjoy it in shares.[1]

An estate taken by a widow of the family by inheritance as an heir from a male is a limited estate.[2]

But an estate which devolves on her as an heir to a daughter of the family, *e. g.*, grand-daughter or a daughter of the husband's brother who takes an absolute estate in Bombay, will be an absolute estate.[3]

Presumption :—It was held by the Privy Council in the case of a grant to a widow, that there is no presumption that it is by way of maintenance or as strîdhana, and that in the absence of any evidence as to the terms of the grant, the widow must establish an absolute title.[4] And later their Lordships construed a grant in a will to the widow and daughter-in-law as conferring an "absolute ownership.[5] And this decision was followed in Madras where it was held that in the absence of an express limitation or words to that effect—a grant to a Hindu female conveys an absolute estate, and that there was no presump-

1 *Durga Dat* vs. *Gita*, 33 All. 443 : 8 All. L. J. 220. See also *Chengappa* vs. *Buradagunta*, 43 Mad. 855.

2 *Lakshmibai* vs. *Ganpat Moroba* 5 Bom. H. C. O. C. J. 128.

3 *Gandhi Maganlal* vs. *Bai Jadab*, 24 Bom. 192 (F. B.); *Narayan* vs. *Waman*, 46 Bom. 17 : 23 Bom. L. R. 587.

4 *Braja Kisora* vs. *Sri Kundana Devi* 26 I. A. 66.

5 *Surajmani* vs. *Rabi Nath*, 30 All. 84, 88 : 35 I. A. 17 ; See also *Fateh Chand* vs. *Rup Chand*, 43 I. A. 183 ; *Bhaidas* vs. *Bai Gulab*, 49 I. A. 1 ; *Sasiman* vs. *Shib Narayan* 49 I. A. 25 ; *Lalit Mohun* vs. *Chukkun Lal*, 24 I. A. 76.

tion of law to the contrary at least in that Presidency.[1] Property passed to a wife by a gift for a consideration (Hiba-bil-iwaz) was held to be her absolute property[2].

So a grant by Government enfranchising certain Karnam service inam lands in favour of the widow and daughter of the karnam, and giving them absolute estate therein was held to make the grantees absolute owners.[3]

(2) **A daughter** takes an absolute estate under the *Mayûkha* and *Mitâkṣharâ* in the Bombay Presidency[4].

In other provinces she takes only a life estate[5].

Sister also is a *daughter* of the family. Except in Bombay and a single instance in Madras, her claim is not recognized in India. In Bombay she takes an absolute estate[6]. In **Dharwar** she is preferred to a brother's widow.

Descent of property taken absolutely by a female heir :— According to the earlier decisions her heirs are the heirs of such property.[7] But West J., held that "according to the

1 *Ramachandra Rao* vs. *Ramachandra Rao*, 42 Mad. 283 (See pages 286–290); *Narasingh Rao* vs. *Mahalakshmibai*, 55 I. A. 180 : 50 All. 375 ; *Hitendra Singh* vs. *Maharaja of Darbangha*, 55 I. A. 197 ; *Jantri* vs. *Gendan Singh*, 49 All. 779.

2 *Hitendra Singh* vs. *Maharaja of Darbhanga*, 55 I. A. 197.

3 *Venkata* vs. *Veerabhadrayya*, 44 Mad. 643 : 48 I. A. 244 ; *Palamandi* vs. *Velayudam Pillai*, 52 Mad. 6.

4 *Pranjivandas* vs. *Devkuverbai*, 1 Bom. H. C. 130 ; *Bhagirthibai*, vs. *Kahnujirav*, 11 Bom. 285 (F. B.) ; *Jankibai* vs. *Sundra*, 14 Bom. 612 ; *Vithappa* vs. *Savitri*, 34 Bom. 510 : 12 Bom. L. R. 487 ; *Daulatram* vs. *Govindrao*, 1. N. R. L. 13.

5 *Karimuddin* vs. *Gobind Kishna*, 36 I. A. 138 : 31 All. 497.

6 *Vinayak* vs. *Lakshmibai*, 1 Bom. H. C. 117 ; *Tuljaram* vs. *Mathuradas*, 5 Bom. 662 ; *Rindabai* vs. *Anacharya*, 15 Bom. 206.

7 *Navalram* vs. *Nandkishore*, 1 Bom. H. C. 209 ; *Bhaskar* vs. *Mahadev*, 6 Bom. H. C. (o. c. j.) 1.

Moyûkha inherited property, though it is *strîdhana*, not being one of those kinds of *strîdhana* for which express texts prescribed exceptional modes of descent, goes on the woman's death to her sons and the rest, as if she were a male; and this notwithstanding her having a daughter."[1] The same interpretation was adopted later on.[2] This was because of the wording of the *Mayûkha* which says "sons and the rest." Telang, J. examined all these cases, and has explained the text thus :—" The heirs to *strîdhana* proper and *strîdhana* improper are identical save that as between the male and the female offspring, the latter have a preferential right as regards *strîdhana* proper, while the former have a similar right as to *strîdhana* improper.[3]" This interpretation of the passage may now be accepted as final.[4]

Rule of representation.

The doctrine of representation does not apply in the case of *strîdhana* as that doctrine is based on religious efficacy. So the Bombay High Court has held that even in the case of Non-technical *strîdhana* the same rule obtains under the *Mayûkha*. A son therefore has preference over the son of another predeceased son.[5]

Extent of a woman's estate (Widow's) : Its nature must be described by restrictions placed upon it, and not

1 *Vijiarangam* vs. *Lakshuman*, 8 Bom. H. C. (o. c. j.) 244.

2 *Bai Narmada* vs. *Bhagwantrai*, 12 Bom. 505.

3 *Mani Lal* vs. *Bai Reva*, 17 Bom. 758.

4 See also *Sheo Shankar* vs. *Debi Sahai*, 30 I.A. 202 : 25 All. 468 and cases on page 473 also p. 476, and *Sheo Pertab* vs. *Allahabad Bank*, 30 I. A. 209.

5 *Bai Raman* vs. *Jagjivandas*, 41 Bom. 618 : 19 Bom. L. R. 629.

by the terms of duration. It is not a *life estate* (as such), nor an estate held in trust for reversioners. She is not bound to save nor to invest, and if she invest, she is not bound to prefer one form to another. She is forbidden to commit waste, or endanger the property; but short of that, she may spend the income and manage the principal as she thinks proper. If she makes savings, she can give them away as she likes during her life, and is not bound to leave behind her more than what she received. Within the limits imposed upon her, she has the most absolute power of enjoyment. She is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heir upon her death.[1] She is not liable to account to any one; but is at liberty to do what she pleases with the property during her life-time provided only that she does not injure the reversion.[2] She represents the estate during her lifetime, and her powers of alienation are no less than those of the manager.[3]

Alienation by a widow :—A widow may alienate subject to certain conditions. Her alienation is not, therefore, absolutely void, but it is *prima facie* voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any court. There is, in fact, nothing for the court either to set aside or cancel as a condition precedent

1 *Bijoy Gopal* vs. *Krishna*, 9 Bom. L. R. 602, 34 Cal. 329: 34 I.A. 87 : at pp. 604—See also *Janaki Ammal* vs. *Narayanasami*, 43 I.A. 207.

2 *Renka* vs. *Bhola Nath*, 37 All. 177.

3 *Raoji Rupa* vs. *Kunjalal Hiralal*, 57 I. A. 177 : 32 Bom. L. R. 808 : 55 Bom. 455.

to the right of action of the reversionary heir.[1] Where she is empowered to alienate she can pass a perfectly good title by alienation.[2]

The alienee, however, will not be entitled to claim any amount for the improvement made by him where the addition was not in the nature of an ordinary repair.[3]

Co-widows succeeding as heirs to their husband take a joint estate, which is indivisible. If for the sake of convenience they agree to divide the property and live each in separate management, that is not to be regarded as a partition.[4]

A question arises when one of the widows so in management of her share alienates it or part of it for a legally necessary purpose, whether such an alienation without the consent of the other widow is good and binding.

The Madras High Court has answered the question in the negative.[5]

The Allahabad High Court has taken a different view and held that for a legally necessary purpose the widow was competent to alienate even without the consent of the other co-widow.[6]

Reversioners and their position :—A reversioner is a person who would be entitled to inherit an estate upon the

1 *Bijoy Gopal* vs. *Krishna*, 34 Cal. 329-333 : 84 I. A. 87 ; *Sitaram* vs. *Khandu*, 22 Bom. L. R. 1155 : 45 Bom. 105.

2 See *Thakur Vasenji Morarji* vs. *Mt. Chanda Bibi*, 17 Bom. L. R. 556 (P. C.). See also *Laxman Madhavrao* vs. *Bhagvan singh Narsingbhau*, 23 Bom. L. R. 55.

3 *Sidramappa* vs. *Shidappa*, 1 Bom. L. R. 461.

4 *Appalasuri* vs. *Kannamma Nayuralu*, 49 Mad. L. J. 479 90 I. C. 881.

5 *Ibid.*

6 *Jai Narain* vs. *Munna Lal*, 50 All. 489.

death of an heir who has only a life-interest in it. It is only such reversioners as are living at the death of the life-holder that are entitled to claim. His is therefore a contingent estate--a mere *spes successionis*—and cannot be the subject of a transfer.[1] He has no right to surrender the reversion in favour of the life-tenant.[2] He cannot sue for a declaration as such as to his title as a reversioner though he may ask for an injunction in case of waste.[3] There is nothing, however, to prevent such a declaration incidentally when the conflict lies between two reversioners one of whom pleads an acceleration.[4]

When a person claims as the next reversioner, he has not merely to prove his descent from the same common ancestor as that of the last male holder, but also to adduce evidence that there was no nearer heir in existence with a better claim.[5]

A reversioner does not claim through the widow or another reversioner and therefore possession which is adverse against the widow, or other reversioner does not necessarily become so against the reversioner.[6]

1 *Bhogaraju Venkatrama Jogiraja* vs. *Addeppalli Seshayya*: 35 Mad. 560; *Amrit Narayan Singh* vs. *Gaya Singh*, 45. I.A. 35.

2 *Gangabai Joshi* vs. *Hari Ganesh Joshi*, 45 Bom. 1167.

3 *Janaki Ammal* vs. *Narayanasami Aiyar*, 39 Mad. 634: 43 I. A. 207; *Navaneetha Krishna* vs. *Ramaswami*, 40 Mad. 871. See also *Thakurain Jaipal Kunwar* vs. *Bhaiya Indur Bahadur Singh*, 31 I. A. 67 : 26 All. 238.

4 *Saudagar Singh* vs. *Pardip Singh*, 45 I. A. 21.

5 *Surjan Singh* vs. *Sardar Singh*, 23 All. 72. (P. C.)

6 *Bansi Dhar* vs. *Lachmi Narain*, 8 All. L. J. 849; *Srinath Kur* vs. *Prosunno Kumar Ghose*, 9 Cal. 934; *Ram Kali* vs. *Kedar Nath*, 14 All. 156; *Amrit Dhar* vs. *Bindesari Prasad*, 23 All. 448; *Jhamman Kunwar* vs. *Tiloki*, 25 All. 435.

Consent by reversioners:—The restrictions on alienation, however, do not apply where the alienation is with the consent of reversioners. And the consent of the reversioner on the ground of legal necessity raises a presumption as to its existence, although the reversioner gets a benefit under it.[1]

The reversioner cannot impugn the validity of the sale, as he is regarded as estopped by his election[2], and it did not matter to which sex the reversioner belonged[3]. Such consent may precede the transaction, or may be subsequently given in one lot or by several instalments. It may also consist of passing a bond or a mere verbal promise, or a promissory note.[4] And the same principle applies to a gift.[5]

Even if the next presumptive reversioner gives his consent for no consideration for an alienation without necessity the transaction is binding on him when he actually succeeds to the estate, and his consent works as an estoppel against him. Their Lordships of the Privy Council held[6] that "a Hindu widow in possession of her husband's estate as his heir has power, apart from legal necessity, to alienate the estate with the consent of the reversionary heirs when the succession opens out on his death; and that **this**

1 *Akkawa* vs. *Sayyadkhan*, 51 Bom. 475 (F. B.) : 29 Bom. L. R. 386; *Basappa* vs. *Fakirappa*, 46 Bom. 292 : 23 Bom. L. R. 1040.

2 See *Basappa* vs. *Fakirappa*, 46 Bom. 292; *see also* 51 Bom. 475 at p. 486.

3 See *Bajrangi Singh* vs. *Manokarnika Bakht Singh*, 35 I.A. 1 : 30 All. 1; *Bhup Singh* vs. *Jhamman Singh*, 44 All. 95.

4 *Bassappa* vs. *Fakirappa* 46 Bom. 292 : 23 Bom. L. R. 1040.

5 *Ramakottayya* vs. *Viraraghavayya*, 52 Mad. 556.

6 *Bajrangi Singh* vs. *Manokarnika Bakhsh Singh*, 35 I. A. 1.

principle has been admitted by all the High Courts in India."[1] And these cases were followed in Bombay.[2] where the general proposition was modified by limiting the application of this principle to transfers for consideration. It was held that it cannot be extended to a voluntary transfer by way of gift, where there is no room for the theory of legal necessity.[3] And the gift can be attacked by remote reversioners when the nearer ones consent.[4] So an alienation by way of a compromise with persons who had no *bona fide* claim to the property at the time is not binding on the reversioner.[5]

But a mere *spes successionis* cannot be transferred, as such a transfer would be invalid under S. 6 of the Transfer of Property Act.[6]

N. B.—It would not be extended to cases where the widow has made only a partial relinquishment of the estate.

Nature of Consent :—Ordinarily the consent of the whole body of reversioners should be obtained, although there may be cases in which special circumstances may render the strict enforcement of this rule impossible.

1 *Pulin Chandra Mandal* vs. *Bolai Mandal*, 35 Cal. 939.

2 *Pilu* vs. *Babaji*, 34 Bom. 165.

3 See also *Ramphal Rai* vs. *Tula Kuari*, 6 All. 116; *Abdulla* vs. *Ram Lal*, 34 All. 129 : *Bai Parvati* vs. *Dayabhai* 22 Bom. L. R. 704 : 44 Bom. 488.

4 *Bakhtawar* vs. *Bhagwana*, 32 All. 176 ; *Rangaswami Gounden* vs. *Nachiappa*, 46 I. A. 72 ; see also *Tukaram* vs. *Yesu*, 32 Bom. L. R. 1463 : 55 Bom. 46 ; *Narayanaswami Ayyar* vs. *Rama Ayyar*, 57 I. A. 305 : 53 Mad. 692.

5 *Anup Narayan* vs. *Mahabir Prasad*, 3 Pat. L. J. 83.

6 *Bai Parvati* vs. *Dayabhai*, 44 Bom. 488.

The kindred in such a case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events there ought to be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and justified by Hindu Law.[1]

There must be such a consent as to satisfy the court that the kinsmen most interested in opposing did not oppose. If this is proved, nothing more need be proved. The consent of the joint body of reversioners validates the alienation as being evidence of the propriety of the transaction.[2] In certain cases such consent has a double aspect not merely as raising a presumption as to the propriety, but also as raising an estoppel against persons consenting.[3]

A distinction is to be drawn between the power of a Hindu widow to surrender or relinquish the estate and her power to relinquish it for necessity.

The decided cases show that (1) she can surrender her whole interest in the whole estate in favour of the nearest reversioners at the time, but the surrender must be *bona fide*, not a device to divide the estate with the reversioner. In that case the question of necessity does not arise.

(2) When an alienation of the whole or part of the estate is to be supported on the ground of necessity, then if necessity

1 *Raja Lukhee Dahe* vs. *Gokool Chundar*, 13 M. I. A. 209.

2 *Abhesang* vs. *Raisang*, 14 Bom. L. R. 602; see also *Moti* vs. *Laldas*, 41 Bom. 93.

3 *Ramkrishna* vs. *Tripurabai*, 13 Bom. L. R. 940. See also *Rangasami Gounden* vs. *Nachiappa Gounden*, 46 I. A. 72; *Basappa* vs. *Fakirappa*, 46 Bom. 292; *Akkava* vs. *Sayyadkhan*, 51 Bom. 475. (F. B.)

is to be proved *aliunde* and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to dispute the transaction will be held to afford a presumptive proof that the transaction was a proper one.[1]

N. B.—It is immaterial whether the concurrence of the reversioners is given at the time of the alienation or whether it is given subsequently.[2]

N. B.—Consent in cases where a *status* is conferred should be carefully distinguished from consent in regard to the transfer of property. For while the first *must* be *before* the event, the latter may be even after it.

Acceleration of the estate :— She can, however, during her life-time, convey the whole estate absolutely to the next reversioner and thereby accelerate the reversionary succession.[3] It has been held that "according to Hindu Law, a widow can accelerate the estate of the heir, by conveying absolutely, and destroying her life-estate." But in order that the alienation should bind the remote reversioners, she must convey to him her estate absolutely.[4]

Surrender

Effect of surrender is not to give the reversioner an immediate right to challenge alienations previously made by her ; but the right to do so remains in abeyance until her death.[5]

The whole doctrine of surrender is a creation of judicial decisions. It was unknown to Hindu Law.

1 *Rangasami Gounden* vs. *Nachiappa*, 46 I. A. 72.

2 *Bajrangi Singh* vs. *Manokarnika Baksh Singh*, 35 I. A. 1.

3 *Behari Lal* vs. *Madho Lal*, 19 I. A. 30. *Nobokishore* vs. *Hari Nath*, 10 Cal. 1102 (F. B.).

4 *Marudamuthu Nadan* vs. *Shrinivasa Pillai*, 21 Mad. 128. *Hunsraj* vs. *Bai Moghibai*, 7 Bom. L. R. 622.

5 *Lachmi Chand* vs. *Lachho*, 49 All. 334.

Its nature :—A surrender by a widow is not a transfer of any kind. It is merely an abandonment of an interest (स्वत्वहानि) which the next reversioner takes in his own right, and not as a conveyance from the widow. Such an abandonment, therefore, can be effected without a written instrument, although if one is executed it would require to be registered.[1] Such surrender may be effected in one transaction or may be brought about by several stages. It is not necessary that it should take effect by one act.[2] The essence of the transaction is a *bona fide* completed abandonment of all interest in the entirety of the property by the widow.

And the entire estate must be conveyed; alienation of a portion only would be invalid even though made with the consent of the next reversioners, unless such a consent was given *bona fide* and for good consideration in which case it will bind only such as claim through the reversioner consenting.[3] Where there was a *bana fide* surrender of the whole estate and not a device to divide it with the next reversioner, the giving of a small portion to the widow for maintenance was held to be unobjectionable.[4] And where there has been a complete surrender and self-effacement by the widow, she is precluded from asserting any claim against the estate, and such estate absolutely vests in the reversioner.[5]

1 *Satyalakshmi* vs. *Jagannath*, 34 Mad. L. J. 229.

2 *Maru* vs. *Hanso*, 48 All. 485.

3 *Muthuveeru Mudliar* vs. *Vythilinga*, 32 Mad. 206; *Moti Raiji* vs. *Laldas Jebhai*, 41 Bom. 93; *Sham Rathi Rai* vs. *Jaichha Kunwar*, 39 All. 520; *Sundarasiva Rao* vs. *Viyyamma*, 48 Mad. 933.

4 *Surreshwar Misser* vs. *Maheshrani Misrain*, 47 I. A. 233.

5 *Bhagwat Koer* vs. *Dhanukhdhari Prasad Singh*, 46 I. A. 259.

This doctrine of relinquishment and acceleration cannot apply to partial transfers which can be supported only by legal necessity or consent of reversioners.[1] Surrendering the whole means keeping nothing for herself.[2] It cannot affect previous alienations.[3] So where she made a gift of some portions and surrendered the rest it was held to be a good surrender.[4]

It was, however, held in Bombay where the widow alienated a portion of the property, and then made a surrender of the remaining portion to the presumptive reversioner that, having by her prior alienation put it beyond her power to surrender the entire estate, the subsequent surrender was inoperative as such.[5]

The surrender must be to the next reversioner and not to a co-heir. So where one of the co-widows surrendered her interest to her co-widow and the latter predeceased her, it was held that there was no acceleration and that the reversioners could not succeed immediately.[6] In *Rup Ram* vs. *Rewati*[7] a widow had made a gift to her daughter who predeceased her. But the court held that no action by the donee's heir to recover possession would lie during the donor's life-time. A surrender is not a conveyance, but only an extinguishment of her rights. The reversioner gets the estate in his own right, Therefore no writing or regis-

1 *Debi Prosad Chowdhury* vs. *Golap Bhagat*. 40 Cal. 721.
2 *Ardhanari Gounden* vs. *Ramasami*, 25 Mad. L. J. 8.
3 *Subbamma* vs. *Subramanayam*, 39 Mad. 1035.
4 *Satyalakshmi Narayana* vs. *Jagannadhan*, 34 Mad. L. J. 229.
5 *Sakharam* vs. *Thama*, 51 Bom. 1019.
6 *Chengappa* vs. *Buradagunta*, 43 Mad. 855.
7 32 All. 582 : 6 I. C. 541.

tration is necessary. If, however, an instrument is made, it must be registered.[1]

Reservation for maintenance :

In a recent case in **Bombay**, it was held that where a provision for the maintenance of the widow for her life was attached as a condition to the gift, that did not constitute a valid acceleration, for any consideration was sufficient to change an acceleration into an alienation.[2] An exactly opposite view was taken in **Madras** and **Patna.**[3] To the same effect have been the decisions of the **Privy Council.**[4] Very recently the Privy Council invalidated a conveyance to the next reversioners on the ground that it did not convey the entire estate.[5] The Madras High Court has held that provided the widow parts with her entire estate, a surrender by her is not invalid on the ground that it is for consideration.[6]

Where the alienation is not supported by necessity or consent as also where the acceleration is not valid in law, and a widow adopts subsequently, the adopted son is not bound by them.[7]

1 34 Mad. L. J. 229, (*Ubi Supra*).

2 *Adiveppa* vs. *Tontappa*, 44 Bom. 255.

3 *Angamuthu Chetti* vs. *Varatharajulu Chetti*, 42 Mad. 854 (F. B.); *Mt. Diltor Koer* vs. *Harkhu Singh*, 2 Pat. L. J. 578.

4 *Bhagwat Koer* vs. *Dhanukadhariprasad Singh.* 46 I. A. 259; *Surreshwar* vs. *Maheshrani*, 47 I. A. 233.

5 *Mansingh* vs. *Nowlakhbati*, 53 I. A. 11; *Narayanswami Ayyar* vs. *Rama Ayyar*, 57 I. A. 305: 32 Bom. L. R. 1564; *Govind Prasad* vs. *Shivlinga*, 32 Bom. L. R. 1482.

6 *Karchi Grahmanaikudu* vs. *Mahalakshmi*, 24 Mad. L.J. 533.

7 *Vaidyanath Sastri* vs. *Savithri Ammal*, 41 Mad. 75 (F. B.); *Dodabasappa* vs. *Basawaneppa*, 20 Bom. L. R. 783.

Savings and Accumulations from the income:—The law as to the position of a widow as regards the savings and accumulations from her husband's income has been gradually undergoing a change.

Accretions:— Property purchased out of savings of the impartible estate is not regarded as an accretion to the corpus, in the absence of evidence to that effect.[1]

A Short Review of cases.

Their Lordships held that a Hindu woman has no greater power of alienation over the profits than she has over the *corpus* of her husband's estate, and that "whatever she purchases out of those profits is an increment to that estate."[2]

The case of *Isri Dutt* vs. *Hansbutti* and other cases were referred to and distinguished in Madras, where it was held that "Savings, or property purchased out of savings by a widow out of the money awarded to her by a decree as maintenance are her *strîdhana*, and pass to the heirs to such property. The court remarked:—

There is no necessary connection between the limited nature of the estate which a widow takes in her husband's property, and the interest accruing to her in the income derived by her as such limited owner. That which becomes vested in her own right and which she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate, in every sense of the term, and devolves as such. As in the present state of the law the income is completely dissociated from the corpus, there is no presumption that savings or purchases with savings effected by a widow are increments to the corpus of the husband's estate and pass together with it.[3] Savings from property allotted for maintenance and property purchased with these is her

1 *Rani Jagadamba* vs. *Narain Singh*, 50 I. A. 1 : 2 Pat. 319.

2 *Bhagbutti Daee* vs. *Chowdry Bholanath.*

3 *Subramanian* vs. *Arunachelam* 28 Mad. 1; *Baikunth Nath* vs. *Jai Kishun*, 51 All. 341.

Strîdhana.[1] Similarly in regard to property purchased with savings from husband's property,[2] it was held that she may so deal with the income of her husband's estate as to make it an accretion to the estate. In each case it is a question of fact.

Accordingly, these restrictions would not apply to property which has passed to a female, not as heir, but by deed or other arrangement, which gives her power of appropriation of the profits. In such a case the accumulations are her absolute property, and pass to her representatives, and not to the heirs of the last male holder.[3]

But the mere fact that a Hindu female takes under a deed or will or arrangement that to which she is really entitled as heiress, does not necessarily enlarge her powers, the question being *what estate* did she take ? not, how she did it ?[4]

Profits not her *strîdhana* and not being disposed of would follow the estate, and an agent appointed by the widow is bound to account to the reversioner for these after her death.[5]

But property acquired by **Adverse Possession** by the widow becomes her *strîdhana* and as such descends to her heirs.[6]

1 *Veeraraghava Reddi* vs. *Kota Reddi*, 31 Mad. L. J. 465.

2 *Wahid Ali Khan* vs. *Tori Ram*, 35 All. 551; *Raja of Ramnad* vs. *V. Sundara Pandiyasami Tevar*, 46 I. A. 64.

3 *Bhagbutti* vs. *Chowdry Bholanath*, 2 I. A. 256; *Ganpatrao* vs. *Vamanrao*, 10 Bom. L. R. 210; *Sambasiva Ayyar* vs. *Venkatesvara*, 31 Mad. 179.

4 *Morali Mohomad* vs. *Shevk Ram*, 2 I. A. 7; *Laxmibai* vs. *Hirabai*, 11 Bom. 69.

5 *Sridhar Chattopadhya* vs. *Kalipada Chuckerbutty*, 16 Cal. W. N. 106; see also *Sham Sundar Lal* vs. *Achhan Kunwar*, 25 I. A. 183.

6 *Rivett-Carnac* vs. *Jivibai*, 10 Bom. 478.

Purposes for which she may assign, or alienate :

"The widow has a larger power of disposition for religious and charitable purposes which are supposed to conduce to the spiritual welfare of her husband than what she possesses for purely worldly purposes. An exhaustive enumeration of these purposes is not possible. This being a question purely of Hindu law, great care must be taken in coming to a decision upon that subject in order to prevent English Judges being warped by impressions made upon their minds in consequence of their habitual application of English law and nature of English decisions to which they are accustomed and to consider in what way a Hindu Court of Justice would have decided the point. The true rule appears to be that there is a distinction between legal necessity for worldly purposes on the one hand and the proportion of the spiritual welfare of the deceased husband on the other, and that within proper limits the widow may alienate her husband's property for the performance of religious acts which are supposed to conduce to his spiritual benefit."[1] The alienation need not necessarily be for a *spiritual necessity*. It is sufficient if it has reference to the *spiritual needs* of the husband or the individual whose property she holds.[2]

Nor is any proof necessary for the validity of the gift that the donee was expected to confer benefit upon the deceased's soul.[3] *e. g.* a gift to the priest on return from pilgrimage, or a permanent dedication of a small portion for the observance of the *bhog* offerings at Jagannâthpuri and for the maintenance of the Pandas was held to be an alienation for a valid purpose.[4]

1 *Khub Lal Singh* vs. *Ajodhya Misser*, 43 Cal. 574.

2 *Vuppulari Tatayya* vs. *Garimilla Ramakrishnamma*, 34 Mad. 288. [Facts: gift of a small portion of property on a Śrâddha ceremony upheld]. See also *Ganpat Dhaku Patel* vs. *Tulsiram*, 13 Bom. L. R. 860.

3 *Gobind Upadhye* vs. *Lakhrani*, 43 All. 515.

4 *Sardar Singh* vs. *Kunj Biharilal*, 49 I. A. 383: 44 All. 503; *Ashutosh Sikdar* vs. *Chidama Mandal*, 57 Cal. 904.

A widow may mortgage or sell the estate for (A) religious purposes, (B) charities, (C) maintenance and (D) necessity, and a debt contracted by her as representative of the estate for the purposes of the estate would be binding on the reversioners, though no formal charge is created.[1] But in the absence of a necessity or a justifying purpose the transaction will not bind the estate.[2]

[Decree for a debt of the husband held to prevail against unjustifiable alienation of the widow made several years before].[3]

Of these in order :

A : Religious Purposes : these include

(1) The performance of funeral obsequies and ceremonies incidental thereto.[4]

(2) Pilgrimages[5] etc. according to the position of the widow in society ; the expenses must be limited by due

1 *Ragella Jogayya* vs. *Nimushakan*, 33 Mad. 492.

2 See *Dharamchand Lal* vs. *Bhawani*, 29 I. A. 183 ; *S. Chidambramma* vs. *S. Husainamma*, 39 Mad. 565.

3 See also *Nandi Singh* vs. *Sitaram*, 16 I. A. 44 : 16 Cal. 677.

4 See *Dalel Kunwar* vs. *Ambika Partab*, 25 All. 266.

5 The following observations of Mr. Mandlik may be noted with advantage in this connection : "I must here take occasion to correct a wrong notion which has lately been adopted by some authorities that a pilgrimage to Benares is an unnecessary expenditure according to Hindu Law. Looking to the cases that are now available on the subject, it appears to me that there are no authorities cited therein which any educated Hindu versed in the subject would hold to be worth considering. A visit to Benares by itself is an essential duty of every orthodox Hindu." Note also the following :— मत्स्यपुराण Vol. II, pp. 616–672 ; अग्निपुराण Vol. I, pp. 373, 377–384 ; मदनपारिजात, तीर्थप्रत्याम्नायप्रकरणम् ; काशीखण्ड ; the त्रिस्थलीसेतु of नारायणभट्ट and many other works.

regard to the entire bulk of the property. An extravagant gift will not be upheld.[1]

She cannot alienate by way of gift even an insignificant portion of her husband's property for the benefit of her own soul.[2] So was held where a widow dedicated one of her husband's houses as a *Dharmashala*, which was held as creating a spiritual benefit for her own soul and not for the husband.[3]

(3) Expenses for the ceremonies of other members, which the husband was bound to perform, *e. g.*, funeral of the mother, etc.[4]

But she has no power of alienation for the purpose of the maintenance, education, *upanayana* and marriage of her daughter's son when his father has sufficient property to do so himself and when he was living with his father along with his other brothers.[5]

(4) Performance of such *Vratas* or vows as are usually observed by widows.[6]

(5) **Husband's debts** are binding upon the widow, unless they were contracted for immoral purposes or unless they were expressly repudiated by him during his lifetime.[7]

1 *Panachand* vs. *Manoharlal*, 20 Bom. L. R. 1 : 42 Bom. 136 ; *Ganpat* vs. *Tulsiram*, 13 Bom. L. R. 860 : 36 Bom. 88.

2 *Pandit Umadat* vs. *Mt. Bhagwan Dei*, 5 Ind. Cas. 283 ; *Har Mitra* vs. *Raghubar Prasad*, 3 Luck. 645.

3 *Sham Dei* vs. *Birbadra Prasad*, 43 All. 463.

4 *Shri Mohan Jha* vs. *Brij Behary Misser*, 36 Cal. 753 ;

5 *Lakharaju* vs. *Yellamraju Rao*, 58 Mad. L. J. 127.

6 *Subramania Iyer* vs. *Muthammal*, 21 Mad. L. J. 482.

7 *Bhagwat* vs. *Nivratti*, 39 Bom. 113 : 16 Bom. L. R. 738.

And the obligation is not affected by the Statute of Limitation or any other bar at law.[1] It is immaterial whether the debts became time-barred during the husband's lifetime or after his death. Her duty to pay her husband's debts is based on her pious obligation to discharge all liabilities. And the same principle was applied to a widowed daughter-in-law in possession of the estate of her father-in-law.[2]

B. Charities : include (1) a portion to a daughter ; (2) building temples for religious worship; (3) digging tanks and the like ; (4) gifts to Brâhmaṇas and idols, if to a small extent would be good and valid against reversioners. But such gifts would be invalid if they covered the whole or nearly the whole property.[4] *e. g.* where out of a two annas share a six pies share was gifted away.[5] Feasts to Brâhmaṇas after returning from a pilgrimage also are good.[6]

A widow governed by the *Mitâkṣharâ* law can make a valid gift of a reasonable portion of the immovable property of her husband to her daughter on the occasion of her *Gowna* or *Dwiragama* ceremony which is performed when the young wife, upon attaining puberty, leaves her parental home to take up her residence in the house of her husband.[7]

C. Maintenance of those whom the last male owner was bound to maintain as well as of herself, and the

1 *Santu Ram* vs. *Mst. Dodan Bai*, 9 Lah. 85 ; *Chimnaji* vs. *Dinkar*, 11 Bom. 320 ; *Kandappa* vs. *Subba*, 13 Mad. 189 ; *Udai Chunder* vs. *Ashutosh*, 21 Cal. 190 ; *Kandasami* vs. *Rajagopalaswami*, 7 Mad. L. J. 363.

2 *Bhau Babaji* vs. *Gopal*, 11 Bom. 325.

3 *Abhesang* vs. *Raisang*, 14 Bom. L. R. 602.

4 *Panachand* vs. *Mahobala*, 42 Bom. 136 : 20 Bom. L. R. 1.

5 *Ishwari Prasad* vs. *Babu Nandan*, 47 All. 563.

6 *Dinanath Ghosh* vs. *Hrishikesh Pal*, 18 C. W. N. 1303, but contra see *Gur Dayal Singh* vs. *Karam Singh*, (38 All. 255 below).

7 *Churaman Sahu* vs. *Gopi Sahu*, 37 Cal. 1.

marriage expenses of those who were entitled to these being defrayed out of the property, are purposes for which she may sell, etc.[1]

D. The last is **Necessity :** This cannot be defined. In this case her position is just that of a manager, and the principles in *Hunooman Pershad's* case apply to her acts.

(2) **Costs of** maintaining or defending suits may justly be met by a widow from out of the estate.[2] If it appears that the money was required for the purposes of litigation, and that no other source was available.[3]

There is a distinction between litigation undertaken to *protect* the property, and litigation the object of which was to obtain " a possible benefit " for the estate, the former relating to the security of that which was already acquired, and the latter to that which may possibly be acquired. In the former case the costs would be binding only, but in the latter class of cases, the costs would be binding, if it has ended in actual benefit to the estate on the principle that "he who enjoys the benefit ought to bear the burden also."[4]

In a recent case their Lordships of the Privy Council observed: "it was impossible to give a precise definition of 'benefit to the estate' applicable to all cases.....The preservation of the estate from extinction, the defence against hostile litigation affecting it, the protection of its portions from injury, or deterioration by inundation, these and such like things would obviously be benefits."[5]

1 *Sadashiv* vs. *Dhakubai*, 5 Bom. 540.
2 *Amjad Ali* vs. *Moniram*, 12 Cal. 52.
3 *Bhima reddi* vs. *Bhaskar*, 6 Bom.
4 *Jagat Singh* vs. *Rawat Kanaiya*, 4 Luck. 26.
5 *Palaniappa* vs. *Deivasikamony*, 44 I. A. 147 at p.155.

And referring to these decisions, the Allahabad High Court has recently observed that an act for which the character of "legal necessity" or "benefit of the estate" could be claimed must necessarily be a defensive act -- something undertaken for the protection of the estate already in possession, and not an act done with the purpose of bringing fresh property.[1]

(3) **Necessary repairs** of the property would be a good ground for supporting a debt contracted, and the debt would be a charge upon the estate in the hands of the reversion.[2]

(4) **Marriages of daughters** :—Expenses incurred for the marriages of daughters and other members are necessary expenses.[3]

In a recent case (unreported) the Bombay High Court has held that the second marriage of a daughter is a legal necessity, though not a religious duty.[4]

And recently it was held that an alienation made by her to provide dowry for her daughter would be binding, if such an alienation is proved to be a reasonable one[5] as also to pay a debt incurred by the husband for the daughter's marriage.[6]

(5) **Construction** of a **well** or **house** may or may not be a legal necessity according to the circumstances of the case. It would be if it be for the benefit of the estate, otherwise not.

1 *Bhagwan* vs. *Mahadeo*, 45 All. 399; *Jado* vs. *Nathu*, 48 All. 592.

2 *Harry Mohan* vs. *Ganesh Chunder*, 10 Cal. 823.

3 *Ganpat Dhaku Teli* vs. *Tulsiram*, 13 Bom. L. R. 860; *Makan Lal* vs. *Gaya Singh*, 3 All. 255; *D. Srinivasa Iyengar* vs. *Thiruvengadathayangar*, 38 Mad. 556.

4 *Bhagu* vs. *Shidu Bim Arjuna* (s. a. 288 of 1916 D/. 6th August 1917).

5 *Udai Dat* vs. *Ambika Prasad*, 2 Luck. 412.

6 *Kamala Prasad Singh* vs. *Lalji Prasad*, 9 Pat. 721.

N. B.—In the case of a necessity she is not bound to borrow money, or mortgage the estate and thus reduce her income; but she may sell.

Personal obligation of the widow—How far binds husband's estate? A person dealing with a widow, and wishing to bind the husband's estate in the hands of reversioners must show (1) that the dealing was one in respect of which the widow was authorized to bind the estate, (2) that she intended, and was supposed to do so. In every case, the nature of the transaction and the intention of the parties must be gathered from the recitals in documents or from surrounding circumstances.[1]

The Courts of Bombay, Madras and Allahabad have refused to hold reversioners liable to satisfy bonds executed by a widow as security for loans contracted by her, which neither specifically pledged the estate, nor purported to be executed by her as representing the estate, though in each case the object of the loan was one for which the widow might legitimately have bound her successors.[2]

The Bombay High Court refused to recognise a charge created by her by a will which was to become operative after her death.

Moreover, she cannot direct the devolution of the estate in a line different from that provided by law either with or without the consent of the reversioners.[3]

Decree against the widow:—A decree fairly obtained against a widow as representing the estate would bind the reversioners.[4]

1 *Damodhar* vs. *Jankibai*, 5 Bom. L. R. 350.

2 *Gadeppa* vs. *Appaji*, 3 Bom. 257; *Bhagwantrao* vs. *Ramnath*, 52 Bom. 542.

3 *Rup Narayan* vs. *Gopal Devi*, 36 I. A. 103; 36 Cal. 780.

4 *Mussamati Bhogobutti* vs. *Chawdry Bholanath*, 2 I. A. 256, 261; *Juggo Bai* vs. *Ulsavalal*, 56 I. A. 267; *Kesho Prasad* vs. *Sheo Pragesh*, 51 I. A. 381; 46 All. 83.

Mortgagee in possession:— Where a widow obtained possession of her husband's property as a mortgagee in possession, a decree obtained against her in that connection is binding upon the reversioners.[1]

Vatan lands :—So sale of Vatan lands of which she was in possession and in regard to which proceedings were carried on against her as the representative of the deceased judgment debtor would be binding[2] even when the widow did not contest the suit, provided the plaintiff's case was fairly and properly stated and the widow had an opportunity to defend.[3] And any question of fact, (*e. g.*, of adoption) so decided would bind the reversioner under the principle of *res judicata*.[4] The same would be the case if a daughter held the estate as her father's representative.[5]

So a debt properly incurred by her to meet the cost of litigation against her in regard to the estate would be binding against the reversioners.[6]

Award or Compromise.

But it would be otherwise if the decree is based on an award or a compromise by the widow.[7] Such a decree is void and inoperative.[8]

The mere fact that a decree for *mesne profits* had been obtained against the widow in an action for trespass will not entitle the decree-holder to enforce it against the estate.

1 *Bai Jadi* vs. *Purushottam*, 24 Bom. L. R. 729.

2 *Ganesh* vs. *Laxmibai*, 46 Bom. 726.

3 *Gur Nanak Prasad* vs. *Jai Narain Lal*, 34 All. 385.

4 *Risal Singh* vs. *Balwant Singh*, 40 All. 593 (P. C.)

5 *Hurrinath Chatterji* vs. *Mohunt Mothoor*, 20 I. A. 183; *Raisal Singh* vs. *Balwant Singh*, 45 I. A. 168.

6 *Jagdat Singh* vs. *Rawat Kanhaiyah Baksh*, 4 Luck 26.

7 See *Jeram* vs. *Veerbai*, 5 Bom. L. R. 885; *Rama* vs. *Daji*, 43 Bom. 249; 20 Bom. L. R. 947.

8 *Sadasi Koer* vs. *Ram Gobind Singh*, 15 Cal. W. N. 857.

So in the case of a personal decree against her ;[1] or on a ground personal to the widow ;[2] unless the foundation of the decree be a debt for which the widow could have bound the entire estate;[3] and in a recent case an annuity imposed by a compromise with a widow was held by their Lordships to be a charge upon the estate.[4]

Compromise by the widow :—It has been shown above that a decree based upon an award or a compromise by the widow would not conclude the reversioners. It is not, however, always so. A compromise or an award may be binding under certain circumstances if it was fairly arrived at and especially when a considerable time had elapsed and most of the property had changed hands, when the reversioner was a party to it.[5]

Estoppel :—A reversioner entering into an agreement during the life-time of the widow may become estopped when the succession opens after the death of the widow.[6]

As was observed by their Lordships, the true test to apply to a transaction which is challenged, is whether the alienee derived title from the limited owner. If a compromise is based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledges and defines what that title is, it

1 *Baijun Doobey* vs. *Brij Bhukun Lal*, 2 I. A. 275 ; *Subbi Ganpatibhatta* vs. *Ram Krishna*, 19 Bom. L. R. 919, 1925.

2 *Bai Kunku* vs. *Bai Jadav*, 21 Bom. L. R. 837.

3 *Veerabadra Aiyar* vs. *Marudaga Nachiar*, 34 Mad. 188.

4 *Raja of Ramnad* vs. *Sundara Pandiyasami Tevar*, 46 I. A. 64.

5 See *Bihari* vs. *Daud*, 35 All. 240 ; *Kanhai* vs. *Brij*, 40 All. 487 ; 45 I. A. 118.

6 *Moti Shah* vs. *Gandhara Singh*, 48 I. A. 637.

cannot be challenged by the reversionary heirs. It operates as a family arrangement for the settlement of disputes.[1] Moreover if a compromise appears to be reasonable and prudent and in the interest of the estate, it is binding on the reversioners.[2]

A compromise of a suit in regard to an obligation created by herself stands on the same footing as an alienation and the alienee must prove its binding character.[3]

But a compromise between two persons each claiming absolutely cannot bind the reversioners.[4]

Business transactions:— Where a widow succeeds as such to the business of her husband and carries it on for a number of years same as was done by her husband, she can sell immoveable property purchased by her in course of the business without proof of any legal necessity.[5]

And generally, legal necessity must be real necessity. A mortgage incurred for paying arrears of Government revenue which were purposely allowed to accumulate was held to be not a necessity which would bind the non-consenting reversioners.[6] [In this case the consenting reversioners who had a life-interest were held to be disentitled to their life-estate.]

Burden of Proof:— The onus of proving legal necessity or any other sufficient and justifiable cause is on the alienee.[7]

1 *Khunni Lal* vs. *Krishna*, 13 Bom. L. R. 427 (P. C.)
2 *Ramsumran Prasad* vs. *Shamkumari*, 49 I. A. 342.
3 *Nulla Tirupatiraju* vs. *Nandikolla*, 45 Mad. 504.
4 *Janak Kishori* vs. *Debi Prasad*, 2 Pat. L. J. 370.
5 *Pahwal Singh* vs. *Jwan Das*, 42 All. 109.
6 *Phul Chand* vs. *Jodha*, 6 All. L. J. 547.
7 See *Lala Brij Lal* vs. *Hetram*, 16 Bom. L. R. 362 (P. C.); *Bhawani* vs. *Himmat*, 13 Bom. L. R. 384 (P. C.); *Nazir Begam* vs. *Rao Raghunath Singh*, 41 All. 571.

Her power over her husband's self-acquisitions is not greater than that over the ancestral property[1].

Her power over moveables :— It had been held in Bombay that a widow during her life-time has absolute power over moveables inherited by her from her husband, and may dispose of such property by will.[2] But much doubt was thrown on this case in a subsequent Full Bench case,[3] where it was held that under the *Mitâkṣharâ* law a widow has no power to bequeath moveable property inherited by her from her husband. Four years afterwards a Division Bench (Parsons and Ranade, JJ.) of the same court held that a widow in Gujerath, under the law of *Mayûkha* had power to bequeath moveable property taken by her under the will of her husband, which gave her express power of disposition, Ranade J. observing :—" It appears to me that the testator intended to place no restrictions upon the disposal of the movable property that might remain..... .....With such power, she can even bequeath immoveable property[4].....There is a three-fold distinction (1) between the moveable and immoveable property, (2) between title by bequest and title by inheritance, (3) and a distinction between the *Mayûkha* and the *Mitâkṣharâ*, which must be borne in mind before the rights of a widow in Gujerath, claiming under a will, which gave her express power of free disposition..... are negatived by the sole authority of the Full Bench decision quoted above."[5] This

Bombay.

1 *Mt. Thakur* vs. *Rai Baluk Ram*, 11 M. I. A. 139 ; *Bechar Bhagwan* vs. *Bai Lakshmi*, 1 Bom. 56 ; *Mayaram* vs. *Motiram Govindram*, 2 B. H. C. 313.

2 *Damodar* vs. *Purmanandas*, 7 Bom. 115.

3 *Gadadharbhat* vs. *Chandrabhagabai*, 17 Bom. 690.

4 *Shet Mulchand* vs. *Bai Mancha*, 7 Bom. 491.

5 *Motilal* vs. *Ratilal*, 21 Bom. 170/174.

decision was based on an express power given to the widow.

Where a husband bequeathed moveables to his wife without express words making over to her absolutely it was in earlier cases presumed that the property not so disposed of was intended by him to be held by her as a widow's estate.[1]

But the Privy Council in a later case held that where a grant has been made it is presumed to confer an absolute power.[2]

The Full Bench case in 17 Bom. was followed later on, when it was held that a widow has no power to bequeath by will moveables *inherited* by her from her husband[3] (a case under the Mayûkha); and a division Bench (Russell and Heaton, JJ.) of the same Hight Court held that a widow inheriting moveables from her husband does not take an absolute estate so as to make a valid gift thereof even during her lifetime.[4]

(This decision has the effect of changing a uniform current of decisions on this side of India from the oldest cases on record, of introducing limitations on the woman's right in Bombay, and of importing principles which were hitherto confined to other parts and which are there being occasionally modified by slight departures in favour of an expansion of the woman's rights.)

Under the Benares school the text of the *Mitâkṣharâ* has been differently interpreted and applied. There a female taking by inheritance, whether from a male or a female always takes a qualified estate to which the doctrine of revertor is applicable.[5] And even a gift or a will by a husband in favour of his wife did not ordinarily carry absolute interest in the property to the wife unless such an estate is clear from the general provisions of the

1 *Bhikaji* vs. *Dattatraya*, 2 Bom. L. R. 888.
2 *Bai Shirinbai* vs. *Rattanbai*, 23 Bom. L. R. 618.
3 *Chaman Lal* vs. *Ganesh*, 6 Bom. L. R. 460.
4 *Pandharinath* vs. *Govind*, 9 Bom. L. R. 1305; 32 Bom. 59.
5 *Sheo Shankar Lal* vs. *Debi Shai*, 30 I. A. 202; *Sheo Partab Bahadur* vs. *The Allahabad Bank, Ltd.*, 5 Bom. L. R. 833 (P. C.)

document.[1] If, however, the widow is specially empowered by the deed of gift or will which invests her as full owner, then she can dispose of it as her own by the right of full ownership. It has, however, been held that unless a grant expressly gives any limited estate or unless there is any uncertainty or ambiguity in the grant as to the extent of the interest conveyed, a grant to a Hindu female conveys an absolute estate and there is no presumption of law to the contrary.[2]

From all these cases it will be seen that *inherited* moveables, if not disposed of by her, pass on her death to the next heir of her husband, and cannot be seized in execution of a decree against the widow for her personal debts.[3] And referring to the case in 7 Bom. the court remarked that "if that case is to be regarded as necessarily giving to the heir of a widow on her death such moveables as remain undisposed of by her, it must be treated as of no authority."

A purchase by a husband in the name of his wife does not raise any presumption of a gift to the wife or of an advancement for her benefit.

In India, as a general rule, the criterion as to ownership of property is the source from which the purchase-money was supplied. But it is not the sole criterion; it depends upon other circumstances[4].

Adverse Possession by the widow :—Where a widow is in possession of an estate she holds it derivatively as an heir and as a widow's estate. It cannot be presumed in the absence of evidence to that effect that she was claiming or holding the estate adversely.[5]

1 *Jamna Das* vs. *Ramavtar Pande*, 27 All. 364.

2 See *Surajmani* vs. *Ravinath Ojha*, 30 All. 84 (P. C.); *Lalit Mohun* vs. *Chnkkan Lal*, 24 I. A. 88; *Ramchandra Rao* vs *Ramchandra Rao*, 42 Mad. 282.

3 *Harilal* vs. *Pranvalavdas*, 16 Bom. 229; *Bai Jumna* vs. *Bhai Shankar*, *ibid.*, 233.

4 *Bai Motivahoo* vs. *Purushottam Dayal*, 29 Bom. 306.

5 *Robert Watsan & Co.* vs. *Sham Lal Mitter*, 14 I. A. 178.

If, therefore, while in possession as a widow she acquires and completes a title by adverse possession that would not become her *strîdhana* but would accrue to the estate.[1]

Where a daughter had commenced to hold absolutely against the widow, but subsequently upon the widow's death the estate devolved upon her as heir, it was held that her subsequent possession as heir could not be tacked on to her previous adverse possession, so as to make the whole an adverse possession.[2]

But it would be otherwise where she took possession, and having asserted a preferential title acquired adverse possession not as representing the estate, but independently[3], *e. g.*, during the lifetime of a son or son's widow. In such a case, after the lapse of the statutory period her possession would become adverse and a suit by the reversioners would be barred.[4] The question is one of legal inference from documents, findings of the Courts and other circumstances. In such a case those who derive title from her would also hold adversely to the reversioners. In this connection may also be noted the principles under which a decree fairly obtained against a female holding property as representing the estate concludes the reversioners.[5]

N. B.—The estate which she thus acquires by adverse possession becomes her *srîdhana* and goes to her *strîdhana* heirs,[6] and

1 *Lajwanti* vs. *Safa Chand*, 26 Bom. L. R. 1117 (P. C.); *Anant Dattatraya* vs. *Mahadev Wasudeo*, 31 Bom. L. R. 628.

2 *Dhusjati Uvadhyaya* vs. *Ram Bharos*, 52 All. 222; see also *Abinashchandra Ghos* vs. *Narhari Mehtor*, 57 Cal. 280.

3 *Suraj Balli Singh* vs. *Tilakdhari Singh*, 7 Pat. 169.

4 *Mt. Lachman Kunwar* us. *Anant Singh*, 22 I. A. 25; see also *Sham Koerin* vs. *Dal Koer*, 29 I. A. 132.

5 See *Hurrinath Chattarji* vs. *Mounnt Mothoor*, 20 I. A. 183.

6 *Kanhai Ram* vs. *Mt. Amri*, 32 All. 189.

her alienee or heir can tack on the possession to his after her death.[1]

In the following cases her possession was held to be adverse to the reversioners.

(*a*) Where she was in possession under a gift.

(*b*) Where a plaintiff alleged a custom excluding widows, and the custom was held not to be proved, it was held still that according to the allegations of the plaintiff the widow being in possession for more than 12 years held adversely.

(*c*) Where the widow held for over 12 years as absolute owner, though without any assertion of right.

(*d*) Where widows were entitled only to maintenance, but dealt with the property as owners making gifts, etc.

Adverse possession against the widow if completed by the statutory period would appear to conclude the reversioners.[2]

Beaman J. after an elaborate discussion expressed the view that a suit by a reversioner would not be barred.[3] But very recently the question having been raised, their Lordships of the Privy Council have held that possession which had become adverse against the widow in possession would also bar a suit by a reversioner[4] on the principle that she represents the estate.

It has, however, been recently held that this principle will not apply to a case where the widow had never been in possession, *e. g.*, where she was a minor, when her husband died when also a minor ; and it has been held that the

1 *Baban* vs. *Bhikajee*, 14 Bom. 317.

2 *Chhaganram* vs. *Moti Gaori*, 14 Bom. 512, at 515–516.

3 *Subbi Ganapatibhatta* vs. *Ramakrishnabhatta*, 19 Bom. L. R. 919 at pp. 924–925 ; 42 Bom. 69.

4 *Vaithialinga Mudaliar* vs. *Srirangah Anni*, 52 I. A. 322 ; *Aurabinda Nath* vs. *Manorama Debi*, 55 Cal. 903.

possession which had never had a start against the widow, would not bar the claim of the reversioner.[1]

The point was discussed in two recent cases, where the following proposition was laid down :—

Adverse possession cannot run against the reversioner until after the death of the woman in possession, but where the adverse possession was the result of a decree which is binding against the reversioners, the reversioner is bound.[2]

Suits and other remedies against the widow :—Who are Reversioners ? Who may sue ? A mere stranger cannot sue. No one except those who have an interest in the succession, and who would be injured by the acts complained of, can sue. Those persons alone who can show that they are both the next heirs and related within fourteen degrees are entitled as reversioners.

A **reversioner** has no right or interest *in præsenti* in the property which the female holds for her life. Until it vests in him on her death it is a mere *Spes successionis*.[3]

Such an heir has only a contingent interest. He cannot get a mere declaration that he was the next reversionary heir. But he may have a declaration as to the effect of a deed, notwithstanding the fact that the declaration given involves a finding in his favour that he is a reversionary heir ; but not as a matter of course. A reversioner, to whom the interest is transferred during the widow's lifetime, is not precluded from questioning any previous incumbrance by her.

1 *Mussammat Lachmin* vs. *Ishuri Prasad*, 4 Luck. 892 ; see also *Bankey Lal* vs. *Raghunath Sahai*, 26 All. L. J. 1049 (F. B.) and *Runchordas* vs. *Parvatibai*, 26 I. A. 71.

2 *Abinash* vs. *Narhari*, 57 Cal. pp. 288–295.

3 *Amrut* vs. *Gaya*, 452 A. 35; *Gangabai* vs. *Hari*, 45 Bom. 467.

Remote Reversioner :—The question what reversioners are entitled to bring a suit has been the subject of discussion by the courts. The law has thus been recently summarized[1] : " It is now settled beyond dispute by the decisions of the Judicial committee that the nearest reversioner, who is the presumptive heir in succession, though such reversioner has only a contingent interest, may bring a suit for a declaration that the acts of a female heir in possession do not bind the estate. It is equally well settled that a remote reversioner cannot maintain such a suit, unless the immediate reversioner has fraudulently colluded with the female heir, or for some reason or otherwise has made it impossible for him successfully to challenge the acts of the family heir. He can also impeach a gift by the widow even if made with the consent of the nearer reversioners, or even with his conjunction.[2]

The case would be otherwise where the immediate reversioners, instead of being males taking an absolute estate, are females who take in succession and are entitled only to a life-estate. In such a case the remote male reversioner is entitled to bring a declaratory suit.

On the death of a female after the institution of a suit brought as heiress for possession of property belonging to the last male owner the next reversioner can prosecute the suit as her legal representative within the meaning of the Code of Civil Procedure.

And the Madras High Court has held that a suit brought by a reversioner dying *pendente lite* may be continued by others, such a suit being on behalf of all the reversioners.[3]

1 *Abinash Chundra Mazumdar* vs. *Harinath*, 32 Cal. 62. 65.

2 *Ghisiaham Pande* vs. *Mt. Raj Kumari*, 43 All. 534.

3 *V. Venkatanarayana Pillai* vs. *Subbammal*, 42 I. A. 125.

But the assignee of a reversioner cannot sue by right of subrogation.

An adopted son may bring a suit for setting aside an alienation made by his adoptive mother. His position is not different in this respect from that of a reversioner.[1]

And the position of the second adopted son is in no way different. He does not succeed to the first adopted son, nor is he his representative.[2]

An afterborn son:—A son not in existence at the date of the alienation but born subsequently can also question the alienation if it is not supported by a justifying cause. In this respect an adopted son and an afterborn son stand on an equal footing.

The Madras High Court had taken a different view and it has been held that a son born after adoption under an authority cannot question.[3]

II. **For what they may sue** ? A reversioner can only bring a suit for an act which is injurious to his interests. The true test in such a suit is from whom did the alienee derive title ? He can only ask for such a relief after the widow's death against strangers as the widow herself could have obtained as representing the estate. He is not in a better position.[4] He must prove, not only that he is a reversioner but, that he is the next reversioner.

When can they sue ?

(2) Moreover, he cannot bring a suit for possession of any property during the widow's lifetime. He must prove the widow's death. Otherwise the suit will be dismissed.[5]

1 *Hanmangouda* vs. *Irgouda*, 48 Bom. 645.
2 *Hammant* vs. *Krishna*, 49 Bom. 604 ; 27 Bom. L. R. 642.
3 *Veeranna* vs. *Sayanna*, 52 Mad. 378.
4 *Laxman* vs. *Bhagvansingh*, 23 Bom. L. R. 55.
5 *Mt. Walihan* vs. *Jogeshwar Narayan*, 35 I. A. 38.

The utmost that he can ask for is a declaration that her act is void, or not binding upon the estate beyond her lifetime.

(3) **He cannot bring** a suit for restraining future alienations. The validity of each alienation depends upon the circumstances of each case, and cannot be determined upon beforehand.

Widow's alienation is not void but voidable.[1]

Many times a question arises whether a suit by a reversioner for setting aside a deed was at all necessary. The answer would depend upon the nature of the transaction. If the transaction entered into by the widow was absolutely void then the next reversioner need not take any action at all for setting it aside.

If however, the transaction, is not absolutely void, but only voidable, *e. g.*, in case of leases for long terms, then such transactions would be binding unless they are properly set aside or dissented from. And a Hindu widow has power to grant a permanent lease if it be for the benefit of the estate. Her alienation is *not absolutely void*, but it is *prima facie* voidable at the election of the reversionary heir who may affirm it or treat it as a nullity without the intervention of any Court.[2]

Note :— In the case of an alienation which is *absolutely void* the alienee cannot claim or recover anything in a suit by a reversioner for possession upon the widow's death. And it was held in the case of a mortgage where the mortgagee had erected a building that he could not claim a right to remove the building before he was made to hand over possession of the property to the reversioner.[3]

(4) A reversioner cannot maintain an action for a declaration of title as next heir; for, until the death of the female in possession, it is not possible to say who will be the next heir.

1 *Sitaram* vs. *Khandu*, 22 Bom. L. R. 1155 ; 45 Bom. 105.

2 *Bijoy Gopal* vs. *Krishna Mohini*, 34 I. A. 87 ; 34 Cal. 329.

3 *Vijbhukandas* vs. *Dataram*, 9 Bom., L. R. 1182 ; *Narayan* vs. *Bholagir*, 20 Bom. 298.

(5) He can restrain waste by the widow ; and making a gift of a portion is waste.[1] And the right extends to prevent waste as regards moveables also. But in such a case, he can only ask for an injunction; but for this he must allege and prove specific acts of waste, or mismanagement or any other misconduct. And unless this is done, no order whatever can be passed against the female heir.

(6) The reversioners will be equally entitled to restrain unlawful acts of strangers holding under the widow. But in such a case actual disposition of the intermediate estate, or waste, or injury, must be proved.[2]

(7) In any case it is settled that the next reversioner might bring a suit for a declaration that an adoption was invalid, as he might otherwise lose the evidence which would establish its invalidity, when the occasion arose;[3] and under special circumstances even a more remote reversioner may sue not to challenge the acts and transactions of the widow, but generally for the protection and preservation of the reversionary estate.[4]

(8) A reversioner has a right to take out a succession certificate for a debt due to the estate and it is not affected by the interposition of a widow.

Form of relief (1) When an alienation is set aside the person dispossessed is entitled to sums paid by him for charges binding on the estate with interest as also to compensation for reasonable improvements effected so as to increase the value of the property, even though he himself was not the person who actually spent.[5]

1 *Ahmed Asmal Muse* vs. *Bai Bibi*, 22 Bom. L. R. 826.

2 *Suraji Bansi Kuar* vs. *Mahipat*, 7 Bom. L. R. 669.

3 *Anyaba* vs. *Daji*, 20 Bom. 202.

4 *Ramabai* vs. *Rangrao*, 19 Bom. 614; *Balmukund Lal* vs. *Md. Sohano Kueri*, 8 Pat. 153.

5 *Bhagwant Dayal* vs. *Ram Ratan*, 24 Bom. L.R. 386 : (P.C.)

(2) **Mesne profits :—** If a voidable transaction is set aside as the result of a suit by a person who has the right to avoid it, it was void from the outset as against him. He is therefore entitled to mesne profits.

Necessity and burden of proof:—It lies upon the creditor to show either that there was legal necessity, or at least that he was led on reasonable belief that there was necessity for the alienation. The reversioner need not plead the absence of necessity. In order to justify necessity, it must be proved that the expenses were reasonable, and could not have been met from the income. In the absence of proof of necessity the consent of the next reversioners must be proved, which would raise a presumption of necessity. Such consent must be established by positive evidence that it was given by them upon an intelligent understanding of the nature of the transaction. Mere recitals as to the existence of necessity is not by itself proof of it.

In the case of **Purdanashin** ladies, it must be satisfactorily proved that the transaction had been explained to them, and that they had understood it. There is, however, no absolute rule that a gift by a **Purdanashin** woman is invalid in the absence of proof that she had independent advice. The absence of such an advice is a fact to be taken into consideration at the time of deciding whether she understood the transaction and carried it out deliberately of her own free will.

1 *Gunjeehwar* vs. *Durg Prasad*, 44 I. A. 220.

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CASES